



RESEARCH PAPER 07/35
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The Further Education and Training Bill [HL]

Bill 75 of 2006-07

The Bill enacts provisions which were proposed in the White Paper *Further Education: Raising Skills Improving Life Chances* published in March 2006.

The Bill will restructure the Learning and Skills Council by abolishing local Learning and Skills Councils and creating regional ones.

The Bill will enable the Secretary of State to designate strategy making bodies and place the Learning and Skills Councils under a duty to implement the skills strategies which they develop. Greater London will have its own skills strategy body chaired by the Mayor of London.

The Learning and Skills Council will be placed under a duty to encourage diversity and choice in provision of education and to consult with learners and employers. Further education colleges will be given extended powers to form companies and charitable organisations.

College principals will be required to become qualified.

Further education colleges will be able to apply for foundation degree awarding powers.

Industrial Training Levies will be modernised.

Sue Hubble, Edward Beale, Paul Bolton

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Summary of main points

The Bill contains provisions which were proposed in the White Paper *Further Education: Raising Skills Improving Life Chances* published in March 2006. The White Paper set out the Government's proposals for reforming the further education sector by increasing choice, streamlining administration and improving quality. It encouraged colleges to specialise by focusing on a mission and to ensure that provision was demand-led. The underlying theme of the Paper was improving employability and skills.

The *Further Education and Training Bill* is divided into four Parts. Part 1 concerns the Learning and Skills Council (LSC). Clauses in Part 1 streamline the administration of the further education sector by reducing the number of members on the National Council of the LSC and by abolishing the 47 local LSCs and replacing them with 9 regional councils.

The Bill permits the Secretary of State to designate bodies which will formulate strategies for educational provision which the LSC will be under a duty to implement. Greater London will have its own skills strategy body which will be chaired by the Mayor of London.

The LSC will be under a duty to encourage diversity and choice in provision of education and training and to consult with employers and learners. These provisions aim to create a demand-led system of further education and to foster a personalised approach to learning, which will allow the sector to be more responsive to the needs of the workforce.

Clauses in Part 1 clarify the powers of the LSC to invest in companies and extend the powers of the LSC to design and operate support services.

Part 2 of the Bill relates to the administration of further education institutions. Clauses 14 to 16 transfer power to incorporate and dissolve further education institutions from the Secretary of State to the LSC. Clause 17 will enable the Privy Council to grant further education institutions powers to award foundation degrees. This provision aims to allow more higher education to be delivered through the further education system. Clauses in Part 2 clarify the power of further education institutions to form companies.

Clause 21 enables the Secretary of State to make regulations requiring college principals to achieve a stipulated leadership qualification before taking a new post. This aims to improve the quality of college leadership as part of the Government's drive to spread success and eliminate failure in the further education system.

Part 3 of the Bill amends the *Industrial Training Act 1982* to modernise and streamline the process by which Industrial Training Boards demonstrate support for a levy proposal among employers in the relevant industry. They also require that proposals for levy orders cover a three-year period.

Part 4 of the Bill clarifies the power of higher education institutions to form and invest in companies and there is a new power to form charitable incorporated organisations, in order to encourage the use of new delivery models in further education. Another clause

in Part 4 gives measure-making powers to the National Assembly for Wales in respect of further education and training.

The Bill extends to England and Wales only except for clauses 11, 12, 22 and 23 which extend to Scotland and clauses 11 and 13 which extend to Northern Ireland; and certain general provisions which extend to the whole of the United Kingdom.

The Explanatory Notes accompanying the Bill state that the provisions on shared services, career development loans and industrial training levies will require Legislative Consent Motions (formerly Sewel Motions) in the Scottish Parliament.

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I Background to the Bill

A. Further Education Sector

Further education (FE) covers a wide range of post 16 education provided by schools, sixth form colleges, further education colleges, adult education centres and workplace training. A briefing paper¹ published by the Association of Colleges gives some key facts about FE colleges which illustrate the size and the diversity of the FE sector:

- There are 4 million students in FE colleges – the vast majority of these are adults studying part-time.
- There are more 16-18 year olds in colleges than in school sixth forms (711,000 compared to 447,000).
- Colleges deliver 800,000 vocational qualifications every year.
- Colleges provide 44% of entrants to higher education.
- Colleges deliver 11% of HE provision – this amounts to 200,000 students.
- 297,000 college students are over 60.

1. Statistical overview of the FE sector

At the end of 2006 there were around 5,250 providers who supplied education and training on behalf of the LSC; these included a large number of businesses and charitable organisations². In 2005/06 there were 385 FE colleges that were funded by the LSC and 1,789 school sixth forms in England³. The Department for Education and Skills (DfES) has stated that there were 5.25 million learners across all providers in 2005/06⁴ and 3.6 million learners enrolled on LSC-funded courses in 2005/06; this was nearly 0.6 million (14%) below the 2004/05 figure and the lowest since a new basis of recording numbers was introduced in 2002. The number of 16-18 year olds within this total has increased in each year since 2002 and by a total of 8%, but 19-59 year olds form the majority of learners and their numbers fell by 16%⁵. Data on enrolments at the start of 2006/07 show a further decline⁶.

¹ Association of Colleges *Briefing for Peers, Further Education and Training Bill – Second Reading – Wednesday 13 December at*
<http://www.aoc.co.uk/Members/comms/parl/second-reading-generalinfo.doc>.

² *All active providers (Dec 06)*, LSC

³ *Further education book of facts*, DfES

⁴ *Regulatory Impact Assessment – Further Education and Training Bill (HL)*, DfES

⁵ *Further education, work based learning and adult and community learning – learner numbers in England – 2005/06*, LSC

⁶ *Further education, work based learning for young people and adult and community learning – learner numbers in England – October 2006*, LSC

Success rates in the FE sector have been consistently improving. In 2004/05 74% of all course aims were achieved, up from 71% in 2003/04, 68% in 2002/03 and just over 50% in 1997/98⁷.

In 2005/06 there were 155,000 full-time equivalent staff at FE institutions in England. This number increased steadily from 134,000 in 1995/96 to 157,000 in 2004/05, before falling back in 2005/06. The proportion of this total who were teaching staff has fallen from just over 50% to just under 50% over the past decade⁸.

Unit participation funding per full-time equivalent further education student in England was £4,320 in 2004/05. Expenditure is planned to increase by around 10% in real terms in 2005/06 and stay at around this real level in 2006/07 and 2007/08⁹. Unit funding increased by 20% in real terms over the previous decade. Unit funding actually fell in real terms in the second half of the 1990s, but has increased in each year from 1998/99¹⁰.

2. Structure of the FE sector

The FE sector provides education and training at all levels from basic skills to degree level and shows a strong commitment to social integration and inclusive learning¹¹. However, in the past the FE sector has been called the 'neglected middle child' of the education system placed as it is between the better understood and supported school sector and higher education sector¹².

It could be argued that the delivery of further education has added to the sector's difficulties by creating a complex system of stakeholders and strategies. In many areas Government policy in further education has been implemented through a set of overlapping initiatives aimed at various groups of learners or educational areas such as Success for All¹³, 14-19 Strategy¹⁴, Skills Strategy¹⁵, Skills for Life Strategy¹⁶ and the Agenda for Change¹⁷ (details of these strategies can be found on the dedicated websites given in the footnotes).

Details of Government policy for FE, including the strategies and statements of national priorities in FE, can be found in various White Papers¹⁸ and other policy documents such

⁷ *Further Education and work-based learning for young people - learner outcomes in England 2004/05*, LSC

⁸ *Further education book of facts*, DfES

⁹ HC Deb 6 November 2006 c959-61w

¹⁰ *Education and training expenditure since 1995-96*, DfES. Table B5

¹¹ *Realising The Potential. A review of the future of further education colleges*. Sir Andrew Foster November 2005 page 5 at

<http://www.dfes.gov.uk/furthereducation/uploads/documents/foster-02-standard-font.doc>.

¹² Education and Skills Committee, *Further Education* 12 September 2006 HC 649 para 12

¹³ <http://www.successforall.gov.uk/>.

¹⁴ <http://www.dfes.gov.uk/14-19/index.cfm?sid=26>.

¹⁵ <http://www.dfes.gov.uk/skillsstrategy/>.

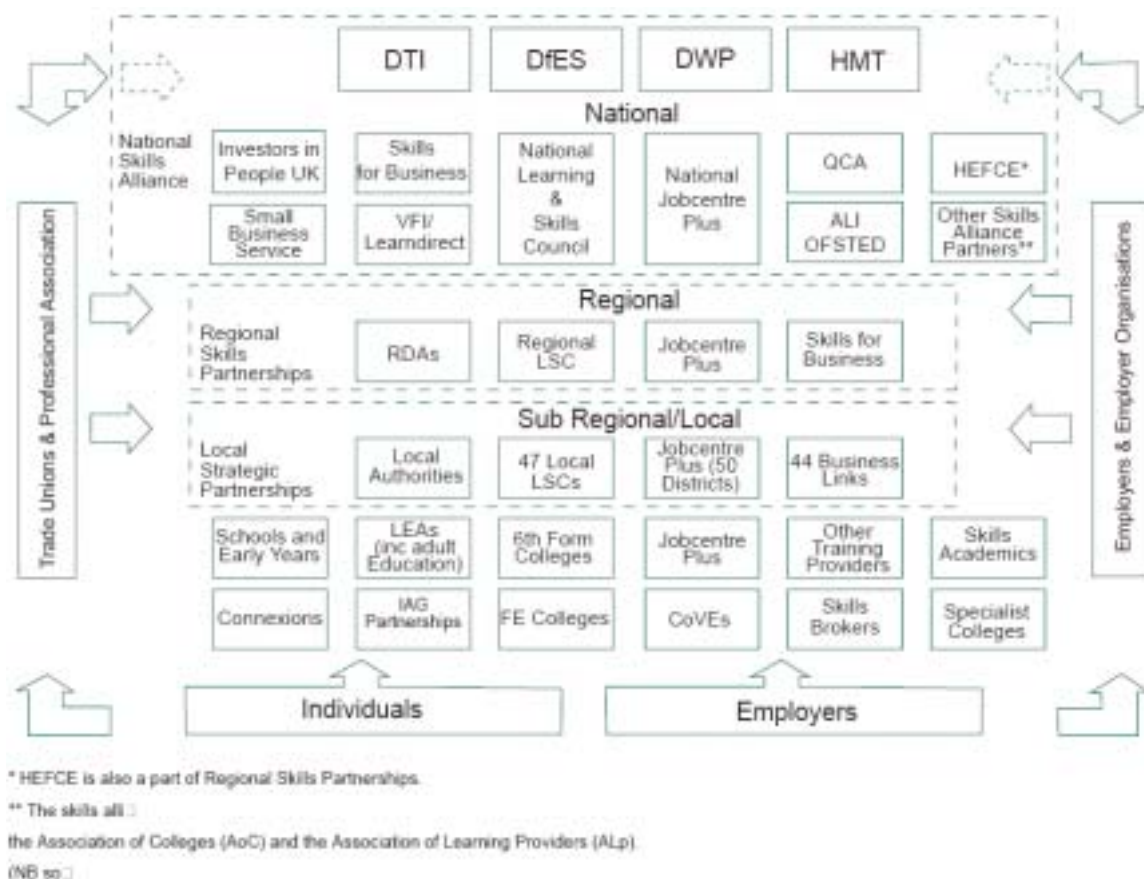
¹⁶ <http://www.literacytrust.org.uk/socialinclusion/adults/skills.html#Background>.

¹⁷ http://www.lsc.gov.uk/National/Partners/PolicyandDevelopment/lsc_agenda_for_change.htm.

¹⁸ *21st Century Skills, Realising Our Potential* Cm 5810 July 2003, *14-19 Education and Skills* Cm 6476 February 2005

as the Annual Grant Letters¹⁹ sent from the Secretary of State for Education to the LSC; these documents and other relevant publications are available on the LSC website.

A diagrammatic overview of the organisational structure of further education and skills in England can be found in the Education and Skills Committee's fourth report of session 2005-2006 called *Further Education*²⁰; this plan gives an insight into the complicated organisational structure of the FE and skills sector:



Sir Andrew Foster's report *Realising the Potential, A review of the future role of further education colleges* also contains a summary of the FE college sector in Appendix 1: The FE Landscape page 81²¹.

B. Reform of FE

The structural framework of the FE and skills sector has evolved into a highly complex organisational overlay involving stakeholder bodies, educational strategies and funding initiatives, which has been likened to a 'jigsaw' by Barry Lovejoy, spokesperson for the

¹⁹ Grant letter 2006/7 from Ruth Kelly to Chairman of LCS at

<http://readingroom.lsc.gov.uk/lsc/2005/about/purpose/grant-letter-2006-07.pdf>.

²⁰ Education and Skills Committee, *Further Education* 12 September 2006 HC 649

²¹ <http://www.dfes.gov.uk/furthereducation/fereview/downloads/foster-02-standard-font.doc>

National Association of Teachers in Further and Higher Education (NATFHE)²². Several reviews have been conducted into various aspects of FE with the aim of rationalising and streamlining the system.

In 2004 the DfES and the LSC jointly commissioned an independent review into the future role of colleges in the FE sector which was conducted by Sir Andrew Foster. The remit for the review was to advise on the key challenges and opportunities facing FE colleges. The review consulted widely and looked into many areas of the FE system such as achievement by students, management and funding of colleges, improving inspection of colleges and infrastructure issues.

The final report *Realising the Potential A review of the future role of further education colleges*²³ was published in November 2005. The report contained 81 recommendations for action, many of which were taken up in the FE White Paper²⁴.

In December 2006 the Leitch Review of Skills²⁵ announced its findings in a report entitled *Prosperity for all in a global economy – world class skills*²⁶. Despite being published after the presentation of the Bill, this review could have a significant impact on the future development of skills training (see section 1E below).

The DfES are in the process of conducting a wide-ranging programme of reviews and consultations covering many aspects of the FE system. The FE reform agenda currently includes work on 14-19 education and skills²⁷, bureaucracy reduction²⁸ and on 5 January 2007 a consultation was launched on the delivery of skills via a demand-led system²⁹.

Further information on the reform of FE and key documents are available on the FE Reform section of the DfES website³⁰.

C. The White Paper

The White Paper *Further Education: Raising Skills, Improving Life Chances* was published in March 2006³¹. The paper identified transforming 14-19 education and upskilling adults as the two key areas for reform in FE. The paper made proposals on seven key themes: mission and specialisation for FE colleges, meeting employer and learner needs, a national strategy for better teaching and learning, spreading success and eliminating failure, funding, a new relationship between planning and funding bodies and providers, and establishing a set of agreed outcomes for FE.

²² Education and Skills Committee, *Further Education* 12 September 2006 HC 649 page 12 paragraph 19 at <http://www.dfes.gov.uk/furthereducation/fereview/downloads/foster-02-standard-font.doc>.

²³ HL Deb 13 December 2006 c1611

²⁴ http://www.hm-treasury.gov.uk/independent_reviews/leitch_review/review_leitch_index.cfm

²⁵ HM Treasury *Prosperity for all in a global economy – world class skills* December 2006 at http://www.hm-treasury.gov.uk/media/523/43/leitch_finalreport051206.pdf.

²⁶ Department for Education and Skills 14-19 education and skills at <http://www.dfes.gov.uk/14-19/>.

²⁷ <http://www.successforall.gov.uk/index.cfm?pg=115>.

²⁸ Department for Education and Skills Consultation. Delivering World-class Skills in a Demand -led system at <http://www.dfes.gov.uk/consultations/conDetails.cfm?consultationId=1454>.

²⁹ <http://www.dfes.gov.uk/furthereducation/index.cfm?fuseaction=content.view&CategoryID=21>.

³⁰ *Further Education: Raising Skills, Improving Life Chances* March 2006 Cm 6768

The overall emphasis of the White Paper was on improving skills for employability and increasing choice in the FE sector.

The White Paper suggested specific reforms to make the FE sector more responsive to the needs of employers and learners:

- A new entitlement for free tuition for learners aged 19-25 studying for their first Level 3 qualification (2 A Levels or equivalent) – backed up with an extra £25 million in funding from 2007/08. For the first time, there will be seamless support through free tuition and maintenance to help young adults carry on training beyond the age of 19 to get the Level 3 qualifications that the economy needs. As resources allow this entitlement will extend to include programmes within the Foundation Learning Tier that support progression through to Level 2 (5 GCSEs A*-C or equivalent) and beyond.
- £11 million for four new programmes of FE Workforce reform: to encourage the recruitment and retention of top-quality graduates and managers into the sector and more staff exchange between FE and business. There will also be a continuous professional development requirement for all staff
- The £11 million national roll-out of the Adult Learning Grant one year early (2007/8) to provide a weekly maintenance allowance for adults on low incomes (19 and above) studying for Level 2 (5 GCSEs A*-C or equivalent) or Level 3 qualifications.
- The introduction of Learner Accounts for learners at Level 3 to give them technician, skilled trade and associate professional qualifications, subsidising the cost of courses at a provider of their choice, together with tailored information and advice.
- Development of a single recognised quality rating, giving new incentives to raise quality and a new, clear source of information for learners and employers.
- The LSC to end funding for failing colleges, providers or departments, encouraging changes such as mergers or federation with another stronger college³².

1. Reactions to the White Paper

Reactions to the White Paper were broadly supportive. The National Institute of Continuing Adult Education (NIACE) welcomed the publication of the White Paper as 'recognition by the Government of the sector's potential to contribute to both economic and social policy' and acknowledged that the paper made a number of positive reforms. However it also referred to the paper as a 'missed opportunity' to address the balance of

³² <http://www.lifelonglearning.dfes.gov.uk/ln06007.htm>

investment between full and part-time students and to debate the national priorities in FE³³.

The National Association of Teachers in Further and Higher Education (NATFHE) also welcomed many parts of the paper but did not support 'contestability' - increased competition among FE providers³⁴.

The Engineering Employers Federation (EEF) summed up the views of many employers organisations by broadly welcoming the proposals, but expressing disappointment that level 3 provision would be focused on young people³⁵.

D. Education and Skills Committee Report, Further Education

On 17 July 2006 the Education and Skills Committee published a report called *Further Education*³⁶. This report did not respond to every point in the White Paper but aimed to 'identify areas of particular significance' and to 'add value' to the debate³⁷. Its conclusions and recommendations on policy and current initiatives stated:

The evidence we have received is suggestive of broad support for much of the content of Foster's report and those proposals carried through in the recent Further Education White Paper. Nevertheless, we have heard a range of concerns which suggest that some of the measures being considered have been insufficiently thought through. These include proposals concerned with refining the focus of further education around "skills and employability", the reform of inspection, and making further education more responsive to learners and employers. We also comment on what, in many ways we see as a much bigger issue, which Foster touched on but did not explore to its full extent: the complex and unwieldy morass of planning, funding and stakeholder bodies that overlay further education³⁸.

We intend to undertake an inquiry in the near future on how the overall skills and training framework fits together but in the meantime look to the Government carry out an urgent review of whether the organisational, planning and funding frameworks for further education and skills, viewed as a whole, constitute a coherent system³⁹.

The report also made recommendations on the White Paper's suggestion that colleges should focus on a specific mission and that in many cases this emphasis should be on skills and employability:

³³ NIACE Press Release *One step forward two steps missed* 27 March 2006 at <http://www.niace.org.uk/Organisation/advocacy/DfES/FEWhitePaper.htm>.

³⁴ NATFHE Press Release *NATFHE responds to FE white paper* 27 March 2006 at <http://www.natfhe.org.uk/?entityType=HTML&id=1206>.

³⁵ EEF response to Further Education: Raising Skills, Improving Life Chances 30 June 2006 at <http://www.eef.org.uk/NR/rdonlyres/0505787D-75F9-4DB3-9428-26660BAD56F5/7599/finalresponse1.pdf>.

³⁶ Education and Skills Committee, *Further Education* 12 September 2006, HC 649

³⁷ *ibid.* page 11 paragraph 17

³⁸ *ibid.* page 10 paragraph 16

³⁹ *ibid.* page 13 paragraph 22

In order for skills and employability to be a useful and guiding principle, the Government needs to spell out what "skills and employability" actually includes and excludes, and what this might mean for individual providers, especially in terms of what they might cease to provide and areas they would be encouraged to expand in⁴⁰.

The Government needs to outline a much more convincing strategy for how it will maintain and develop a broad range of provision overall, looking at and responding to, local needs, as further education colleges rationalise their provision⁴¹.

The Government responded to these recommendations in the report *Further Education: Government Response to the Committee's Fourth Report of Session 2005-06*:

The Government believes that the White Paper 'Further Education: Raising Skills, Improving Life Chances', sets out very clear plans to create a more streamlined organisational, planning and funding system, with clear, distinct and coherent roles and responsibilities for all the key partners.

The Government believes these changes will deliver a clearer, more coherent system. It is important that we allow new and reformed organisations to 'bed down'. However, the Department is keeping under active review the scope for further rationalisation as we implement the reforms in the FE White Paper, and we will be working closely with the independent Bureaucracy Reduction Group as it develops its action plans and fulfils its challenge role on behalf of the sector.

The Government's key delivery partners is the LSC. The LSC is required to work with sectoral, regional and local partners to understand demands. It sets out in the Annual Statement (incorporating Priorities for Success) its priorities for funding and directly links these to the new mission for the sector, and the funding strategy that supports national targets for participation and achievement for young people and adults. This document provides clear guidance on the new mission and the public funding priorities to deliver it.

Individual providers will use this guidance, together with the outcomes of their reviews of their mission, to inform decisions on what they might cease to provide and where they might expand. We would not want to prescribe nationally what this might be as it must be driven by local need⁴².

E. The Leitch Review of Skills

In December 2004 the Government commissioned the Leitch Review of Skills to identify the UK's 'optimal skills mix in 2020 to maximise economic growth, productivity and social justice, and to consider the policy implications of achieving the level of change required'.

⁴⁰ *ibid.* page 17 paragraph 31

⁴¹ *ibid.* page 17 paragraph 32

⁴² Education and Skills Select Committee Fifth Special Report *Further Education: Government Response to the Committee's Fourth Report of Session 2005-06* HC 1712

The Leitch Review of Skills published an interim report on 5 December 2005. Notably it stated that:

The UK's skills profile is unimpressive in comparison with other countries. A significantly larger proportion of the adult population in the UK has low qualifications and a significantly smaller proportion holds intermediate level qualifications than many comparator countries.

[...]

The UK is consistently out-ranked by countries such as Sweden and Finland, the USA and Germany. In strict terms, the UK performs at or around the OECD mean, though this figure incorporates the qualification profiles of countries such as Mexico, Portugal and Turkey⁴³.

The Chancellor announced in the 2006 Budget Report that the review would be extended to include better alignment of measures to tackle worklessness to support 'labour market flexibility, better employment outcomes and greater progression to productive and sustainable jobs for those with skill needs'⁴⁴. The Final Report of the Leitch Review of Skills was published on 5 December 2006, just over two weeks after the presentation of the *Further Education and Training Bill* in the House of Lords on 20 November 2006. This surprised some commentators who had expected Lord Leitch's recommendations to feed into the Bill before it was published; the *Financial Times* said:

Observers of the skills establishment were yesterday left puzzling over how much leeway the proposals would leave Lord Leitch, whose review into the economy's future skills needs is to be published next month.

Among many issues Lord Leitch was expected to consider was whether the LSC should be reformed along regional lines or whether training and the development of new qualifications should be directed by the sector skills councils, which represent the interests of particular industries⁴⁵.

However, the Secretary of State for Education and Skills, Alan Johnson, countered such criticisms stating:

[The bill] will make sure the system is primed to respond to Sandy's [Lord Leitch's] challenge to improve our positions in the international skill rankings⁴⁶.

Significantly, the final report called for a demand-led skills system which meets the needs of, and engages, individuals and employers rather than being centrally planned. Lord Leitch in particular highlighted the initial performance of the Train to Gain programme as an example of the success of a demand led approach. The report outlined a number of objectives for 2020:

⁴³ Leitch Review of Skills, *Skills in the UK: The long-term challenge – Interim Report*, December 2005, page 43

⁴⁴ HM Treasury, *2006 Budget Report*, Chapter 3, March 2006, page 64

⁴⁵ "Fourth revamp planned for skills body", *Financial Times*, 22 November 2006

⁴⁶ *ibid.*

- 95% of adults to achieve the basic skills of functional literacy and numeracy, an increase from levels of 85% literacy and 79% numeracy in 2005;
- Exceeding 90% of adults qualified to at least Level 2, an increase from 69% in 2005. A commitment to go further and achieve 95% as soon as possible;
- Shifting the balance of intermediate skills from Level 2 to Level 3. Improving the esteem, quantity and quality of intermediate skills. This means 1.9 million additional Level 3 attainments over the period and boosting the number of Apprentices to 500,000 a year; and
- Exceeding 40% of adults qualified to Level 4⁴⁷ and above, up from 29% in 2005, with a commitment to continue progression⁴⁸.

Despite these 'stretching' objectives and the comments made by the Interim Report on international comparisons, the Final Report did note that in recent years the UK's education and training programme had improved 'significantly':

The number of working age people in England qualified to Level 2 is estimated to have risen by over 1 million since 2003. The proportion of adults with a high qualification has risen from 21 per cent in 1994 to 29 per cent in 2005. The proportion of people with no qualifications has nearly halved, down from 21 per cent to 13 per cent⁴⁹.

The chart below⁵⁰ provides some comparisons of educational attainment in selected OECD countries⁵¹. In 2004, of the 30 OECD countries, the UK 13th had the highest proportion of 25-64 year-olds with 'low' qualifications. However, the UK does better on the proportion of those aged 25-64 with a 'high' level of educational attainment, ranked 11th 52.

⁴⁷ A Level 4 qualification includes first degree, 'other' degree and sub-degree higher education qualifications such as teaching and nursing certificates, HNC/HNDs, other HE diplomas.

⁴⁸ Leitch Review of Skills, *Prosperity for all in the global economy – world class skills – Final Report*, December 2006, page 37

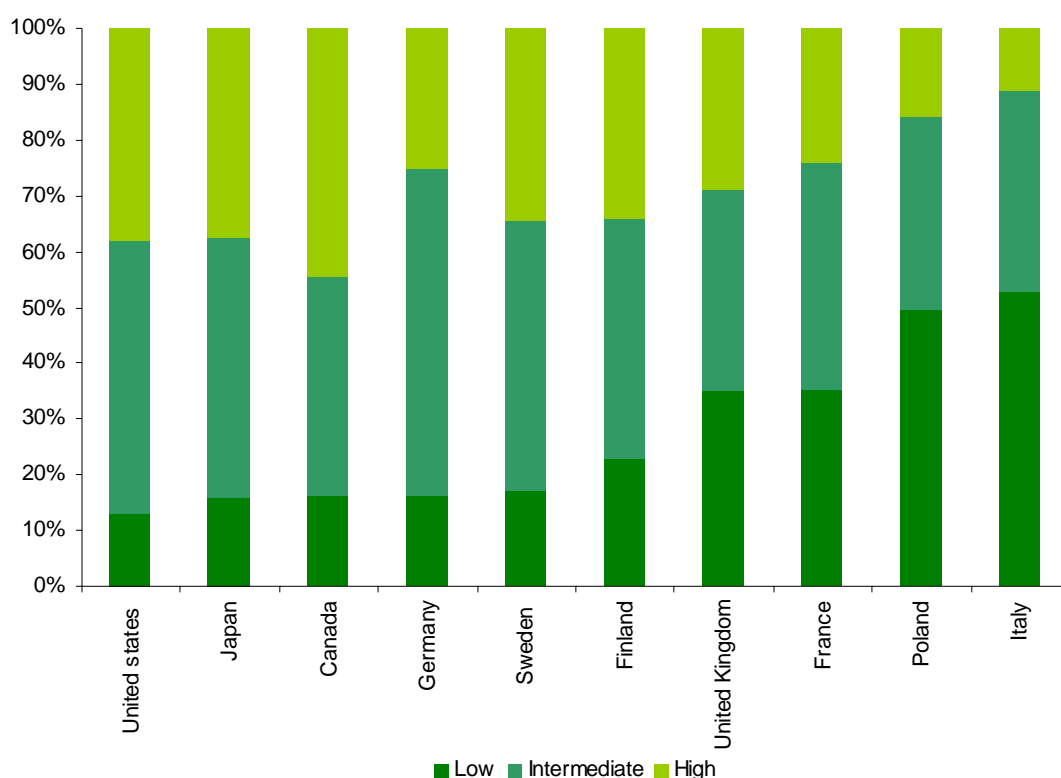
⁴⁹ Leitch Review of Skills, *Op Cit.*, page 40

⁵⁰ This chart is based on chart 2.1 on page 40 of the Final Report of the Leitch Review of Skills.

⁵¹ In this context 'Low' level qualification comprises persons having primary school, lower secondary school or International Standard Classification of Education (ISCED) 3C short programmes (upper secondary education not designed to tertiary education) as their only formal qualification. An 'Intermediate' qualification is equivalent to an 'upper secondary' achievement (including post-secondary non-tertiary education), while 'High' refers to tertiary level education.

⁵² OECD, *Education at a Glance*, 2006, table A1.1a, page 37

Chart 1: Educational attainment: adult population (2004); Distribution of the 25 to 64 year-old population, by highest level of education attained



Source: OECD, Education at a Glance, 2006, Table A1.1a

II Outline of the Bill

The *Further Education and Training Bill* was presented in the House of Lords by Baroness Crawley on 20 November 2006, she outlined the aims of the Bill:

Baroness Crawley: My Lords, on behalf of my noble friend Lord Adonis, I beg to introduce a Bill to make provision about the Learning and Skills Council for England; to make provision about institutions within the further education sector; to make provision with respect to industrial training levies; to make provision about the formation of, and investment in, companies and charitable incorporated organisations by higher education corporations; to enable the making of Assembly measures in the field of education and training; and for connected purposes. I beg to move that this Bill be now read a first time⁵³.

The Bill's provisions aim to embed diversity and choice in FE whilst raising standards in the sector and improving the skills of learners. Consultation with learners and employers is a central feature of the Bill⁵⁴.

⁵³ HL Deb 20 November 2006 c111

⁵⁴ An overview of the Bill is available in DfES Press Release 2006/0166, *Colleges and learning providers ready to face skills challenges ahead: Further Education and Training Bill published today*, 21 November 2006 at http://www.dfes.gov.uk/pns/DisplayPN.cgi?pn_id=2006_0166

The Bill has 32 clauses and 2 schedules and is divided into four Parts: Part 1 the Learning and Skills Council for England, Part 2 Further Education Institutions, Part 3 Industrial Training Levies, Part 4 Miscellaneous and General.

Part 1, clauses 1 to 3 of the Bill restructure the LSC by reducing the minimum number of members of the National Council from 12 to 10, establishing regional committees to be known as regional LSCs and abolishing local LSCs.

Clause 4 allows the Secretary of State to designate strategy-making bodies which will formulate strategies in relation to specified functions of the LSC for either the whole of England, or a specified part of England, but not for Greater London. Clause 4 also provides for the establishment of a body to formulate a strategy setting out how the functions of the LSC are to be carried out in London. Regulations must provide for the Mayor of London to be chairman of this body.

Clause 5 removes the statutory requirement for the LSC to have committees for young people and adults.

Clauses 6 to 13 change the functions of the LSC. Clause 6 places a statutory duty on the LSC to encourage diversity and to increase opportunity and choice in provision of education and training. Clause 7 requires the LSC to have regard to guidance from the Secretary of State about consulting with learners, employers and other specified persons. Clause 8 aligns the LSC planning year to the academic year.

Clause 9 amends the LSC's power to invest in companies as set out in section 18 of the *Learning and Skills Act 2000*, to make it clear that the LSC can form any type of company with the consent of the Secretary of State. This clause also provides that the LSC's power to form charitable incorporated organisations is subject to the consent of the Secretary of State.

Clause 10 is a technical amendment which is necessary for clauses 14,15 and 16 to have effect. The clause amends subsection 6 of section 25 of the *Learning and Skills Act 2000* to enable the Secretary of State to give directions to the LSC in relation to the establishment and dissolution of FE institutions where he is satisfied that the LSC has acted or was proposing to act unreasonably.

Clause 11 extends the powers of the LSC to design, develop and operate support services for persons and bodies exercising education and training functions. Clauses 12 and 13 widen the powers of the LSC to allow it to take part in arrangements for assisting persons to train for employment.

Part 2, clauses 14 to 16 transfer the power to incorporate and dissolve FE corporations from the Secretary of State for Education to the LSC. This amends sections 16 and 27 of the *Further and Higher Education Act 1992*.

Clauses 17 will grant FE colleges the power to award foundation degrees. Clause 18 requires the Secretary of State to lay a report before Parliament about the effect of clause 17 within a period of four years of the clause coming into force.

Clause 19 clarifies the power of FE corporations to form or invest in companies and enables them to form or become members of charitable incorporated organisations.

Clause 20 inserts a new section, 49A, into the *Further and Higher Education Act 1992* which places a duty on FE institutions to have regard to guidance about consulting employers and learners.

Clause 21 enables the Secretary of State to make regulations requiring all college principals to achieve a stipulated leadership qualification before taking up a new post. Current regulations only apply to principals first appointed after commencement of provisions in the *Education Act 2002*.

Part 3 clauses 22 and 23 amend the *Industrial Training Act 1982* to make it easier for Industrial Training Boards to demonstrate support for a levy proposal among employers in the relevant industry.

The final part of the Bill contains miscellaneous and general provisions which concern investment in companies and measure making powers in Wales.

Explanatory Notes to the Bill were published separately as Bill 75 – EN. A *Regulatory Impact Assessment*⁵⁵ document and *Race Equality Impact Assessment*⁵⁶ documents have been published alongside the Bill.

The DfES have published documents to assist with the scrutiny of the Bill on their department website in a section called Further Education and Training Bill 2006 at <http://www.dfes.gov.uk/publications/furthereducationandtrainingbill/>. These documents include draft guidance⁵⁷ and papers published prior to the Lords Report stage to assist with consideration of the Bill⁵⁸.

⁵⁵ Regulatory Impact Assessment Further Education and Training Bill [HL] at http://www.dfes.gov.uk/publications/furthereducationandtrainingbill/docs/FEBillRIA-Commons_revised.PDF.

⁵⁶ *Further Education and Training Bill [HL] Race Equality Impact Assessment* at <http://www.dfes.gov.uk/publications/furthereducationandtrainingbill/docs/FEBillREIA-FINAL.pdf>.

⁵⁷ Illustrative documents. *Further Education and Training Bill [HL] Documents published by the Department for Education and Skills to assist Parliament's consideration of the Bill* at <http://www.dfes.gov.uk/publications/furthereducationandtrainingbill/docs/illdocs.pdf>.

⁵⁸ *Further Education and Training Bill [HL] Documents published by the Department for Education and Skills in advance of Lords Report stage to further inform Parliament's consideration of the Bill* at <http://www.dfes.gov.uk/publications/furthereducationandtrainingbill/docs/DocumentsPublishedPriorToLordsReport.pdf>.

III Part 1: The Learning and Skills Council for England

The LSC is a non departmental public body which was created in 2000 by the *Learning and Skills Act 2000*. It is responsible for the strategic development, planning, funding, management and quality assurance of all post-16 FE and training in England.

The LSC began work in 2001. A history of the establishment of the LSC is available in library research paper RP 00/39 *The Learning and Skills Bill* [HL]⁵⁹.

An overview of the work of the LSC is available in *Leading Change - the LSC's Annual Report and Accounts for 2005-06* at <http://www.lsc.gov.uk/aboutus/annualreport/>

In 2005/06 the LSC spent a total of £10.4 billion. Its main areas of expenditure were FE participation for 16-18 year olds (28%) and people aged 19+ (22%), school sixth forms (17%) and apprenticeships (8%). Administration costs totalled £281 million⁶⁰ (2.7%); within this staff costs were £172 million. The average number of staff employed during the year was 4,451, 3,451 of whom were employed at local LSCs⁶¹. In its first year of operation (2001/02) the LSC's staff totalled 4,694⁶².

The table below sets out DfES funding. The bottom half excludes funding for school sixth forms which transferred to the LSC in 2002/03.

DfES funding for the Learning and Skills Council

£ million

	2001-02 outturn	2002-03 outturn	2003-04 outturn	2004-05 outturn	2005-06 estimate	2006-07 plans	2007-08 plans
<i>Total</i>							
Cash	5,391	7,475	8,582	8,954	9,732	9,947	10,800
2005-06 prices ^(a)	5,992	8,059	8,986	9,124	9,732	9,710	10,269
<i>Excluding funding for school sixth forms</i>							
Cash	5,391	6,076	7,057	7,299	7,949	8,076	8,747
2005-06 prices ^(a)	5,992	6,551	7,389	7,438	7,949	7,884	8,317

(a) Adjusted using September 2006 GDP deflators

Note: Excludes expenditure on education maintenance awards of £20 million and £407 million in 2004-05 and £2005-06 respectively and planned expenditure of £511million and £591million in 2006-07 and 2007-08 respectively

Sources: DfES Departmental Report 2006. Table 8.2

LSC Grant Letter 2006-07 and 2007-08

A. Current Structure of the LSC

The structure of the LSC was set out in Part 1 of the *Learning and Skills Act 2000*; the LSC as set out in that legislation was to have two layers of management; a national body and local committees. Section 1 established the Council and Section 19 of Part 1 placed

⁵⁹ <http://www.parliament.uk/commons/lib/research/rp2000/rp00-039.pdf>.

⁶⁰ Includes depreciation costs

⁶¹ LSC Annual Report and Accounts 2005-06

⁶² Learning and Skills Council Annual Report and Accounts 2002-03

the LSC under a duty to establish committees of the LSC to be called local LSCs. The functions of the local LSCs were set out in sections 20 to 24 of the *Learning and Skills Act 2000*.

In January 2004 the LSC announced a change in its management structure with the appointment of nine new Regional Directors⁶³. The LSC currently therefore has a three tiered structure operating at a national, regional and local level. The national office is based in Coventry and there are nine regional offices which oversee the work of the 47 local LSCs and 148 local partnership teams.

The national office of the LSC is responsible for overall strategy and policy. National strategy is decided by the National Council which is made up of non-executive members. It is advised by three committees: the Young People's Learning Committee; the Adult Learning Committee (which were established under the *Learning and Skills Act 2000*) and the Equality and Diversity Committee⁶⁴.

The day to day implementation of strategy is conducted at the regional level; to facilitate this, the regional bodies liaise with other regional organisations such as the regional development authorities.

The local LSCs are primarily responsible for the details of provision at community level, ensuring that there is appropriate range and quality of local provision. An explanation of this structure and a map showing the nine regions is given in the LSC document *The LSC Leading Change - the Learning and Skills Councils Annual Report and Accounts for 2005-06* on page 21⁶⁵. The work at regional and local level is overseen by more than 750 non-executive council members. Each local LSC has representatives from employers, learning providers and community groups.

B. Restructuring the LSC

In November 2004 the LSC announced the *Agenda for Change* strategy⁶⁶. This initiative aimed to bring about fundamental reform of the FE sector, to change the way the LSC worked in various areas and to simplify and reduce bureaucracy. Since the announcement of this strategy the LSC has undergone a period of reform which has included restructuring at local level. The rationale behind the changes at the LSC was explained by Ray O'Dowd, the LSC agenda for change champion, in the LSC document *Leading Change the Learning and Skills Councils Annual Report and Accounts for 2005-06*⁶⁷:

⁶³ LSC News Issue 177 *The Learning and Skills Council announces new regional management structure* 7 January 2004 at <http://readingroom.lsc.gov.uk/pre2005/externalrelations/press/the-learning-and-skills-council-announces-new-regional-management-structure.pdf>.

⁶⁴ <http://www.lsc.gov.uk/Aboutus/Organisation/>.

⁶⁵ <http://readingroom.lsc.gov.uk/lsc/2006/ourbusiness/reporting/nat-leadingchangeannualreportandaccounts200506-re-aug2006.pdf>.

⁶⁶ LSC News Issue No 235 *LSC launches major change programme in collaboration with FE sector* 1 November 2004 at <http://readingroom.lsc.gov.uk/pre2005/externalrelations/press/Lsc-launches-major-change-programme-in-collaboration-with-fe-sector.pdf>.

⁶⁷ <http://readingroom.lsc.gov.uk/lsc/2006/ourbusiness/reporting/nat-leadingchangeannualreportandaccounts200506-re-aug2006.pdf>.

If we are going to lead all this change effectively, we need to change ourselves and clear out the complicated procedures that have built up over the years. As Mark Haysom explains on the previous two pages, we will be working with providers in a more strategic, hands-off way. Working like this will need about 1,300 fewer staff, which will free as much as £40 million a year for investment at the front line.

In the past year we have set out the reorganisation and staff changes that we need, and these should be in place by late 2006.

The reorganisation has created smaller local LSCs as a result of some jobs transferring to the regional level and a number of staff redundancies⁶⁸. Mark Haysom, chief executive of the LSC has said that since 2002 the LSC has made considerable reductions to its staff:

Since March 2002, we have reduced the number of staff in our organisation from 4,694 to 3,110, a 25% reduction in head count. This is an impressive feat by anybody's standards. We have achieved a 1,300 job reduction since April 2005, and have done so without making any member of staff compulsorily redundant⁶⁹.

Staff reductions have reportedly saved £40 million, however redundancy payments have been expensive⁷⁰. A Parliamentary Question on 22 May 2006⁷¹ gave information on the cost of redundancies:

Learning and Skills Council

Helen Jones: To ask the Secretary of State for Education and Skills pursuant to the answer of 27 April 2006, *Official Report*, column 1259W, on the Learning and Skills Council (LSC), how the estimates of redundancy costs arising from the restructuring of the LSC were calculated (a) when the estimate was given by the LSC in evidence to the Public Accounts Committee in October 2005 and (b) for the purposes of the figure given in the answer.

Bill Rammell [*holding answer 12 May 2006*]: At the Public Accounts Committee in October 2005 Mr. Williams asked about 'the redundancy costs to the LSC to date.'

Mark Haysom replied as per the following table.

⁶⁸ "Redundancies loom at skills quango" *The Guardian* 13 September 2005 at <http://education.guardian.co.uk/egweekly/story/0,,1568107,00.html>

⁶⁹ "Outlook is healthy for slimmer fitter skills body" *The Guardian* 2 January 2007 at <http://education.guardian.co.uk/egweekly/story/0,,1981253,00.html>.

⁷⁰ "Weight proves hard to shift" *The Guardian* 19 December 2006

⁷¹ HC Deb 22 May 2006 c 1871

	<i>Statutory redundancy</i>	<i>Reshaping and redundancy</i>	<i>Total</i>
2001-02	3,083,274	—	3,083,274
2002-03	307,646	—	307,646
2003-04	386,408	11,799,561	12,185,969
2004-05	185,995	52,996	238,991
2005-06	105,231	16,007	121,238
Total	4,068,554	11,868,564	15,937,118

Please note that the data only includes redundancy or voluntary severance payments to employees and excludes the cost of early retirement. This data excludes other associated redundancy costs such as outplacement consultants or tribunal costs as well as costs associated with the current re-structuring exercise.

The LSC's estimated cost of £32 million for redundancy associated with restructuring is based on the maximum numbers of possible redundancies at each band level multiplied by the estimated average redundancy cost. The average redundancy was calculated by taking the greater cost for each individual of the Civil Service Compensation Scheme or four weeks salary for every year of service (actual sample of size of over 3,500 current staff), totalling these for each band and dividing by the number of cases in the sample.

Questions have been raised in Parliament about how the new regional structure of the LSC will correlate with the regional structure of the Higher Education Funding Council for England (HEFCE):

Higher Education Funding Council

Mr. Boris Johnson: To ask the Secretary of State for Education and Skills what measures he has taken to correlate the proposed regional structure of the Learning and Skills Council with the regional structure of the Higher Education Funding Council for England; what consultation has taken place on this matter; at what cost; and if he will make a statement.

Bill Rammell: In May of this year the Learning and Skills Council (LSC) launched its Higher Education strategy—"Partnership, Provision, Participation and Progression". A key part of this strategy is to continue to develop partnership working with HEFCE, and to continue to support the higher education sector in achieving the public service agreement target to raise the HE participation rate of 18 to 30-year-olds towards 50 per cent. by 2010.

The Chairs and Chief Executives of the LSC and HEFCE meet regularly, as do their regional officials, to explore how partnership working can be enhanced across a range of areas and how the regional structures of the two agencies can work more effectively together.

The LSC announced its regional management structure in January 2004 which allowed it to engage more effectively with regional partners, while reducing bureaucracy. Both the LSC and the Higher Education Funding Council for England (HEFCE) are organised in ways which take account of the nine English regions they serve.

The LSC's new arrangements are working well. The proposal in the Further Education and Training Bill for LSC Regional Councils will put them on a statutory footing, so that the regional tier has a formal place in the decision making processes of the Council.

HEFCE is represented on the LSC National Council as an observer and will have been consulted on the plans for Regional Councils as part of that group. The consultation was carried out as part of normal business⁷².

C. Details of the Bill: Clauses 1 to 13

1. Structure of the LSC

Clause 1 of the Bill reduces the minimum size of the LSC National Council from 12 members to 10. Information on the membership of the LSC was given in answer to a Parliamentary Question on 24 January 2007:

Learning and Skills Council

Mr. Boris Johnson: To ask the Secretary of State for Education and Skills what changes (a) have been made and (b) are planned for the membership of the Learning and Skills Council in preparation for the new powers planned for the council on the closure and establishment of further education colleges; and if he will make a statement.

Bill Rammell: We have no plans to change the membership of the Learning and Skills Council as a consequence of the proposed powers in the Further Education and Training Bill for the closure and establishment of further education colleges. However, as part of the streamlining of the LSC to make it more streamlined and responsive, clause 1 of the Bill proposes a reduction in the minimum size of the National Council. As part of its normal business the LSC reviews, from time to time, the composition of its council. The provision in the Bill will give the LSC the flexibility when it carries out these reviews. The LSC National Council's membership reflects both its role and the consumers of the learning system—learners and employers—as well as those who deliver it⁷³.

Clauses 2 and 3 will establish regional councils and abolish the 47 local councils. Each local LSC has a board of 16 members and team of advisors⁷⁴. The 148 local partnership

⁷² HC Deb 12 December 2006 c1008

⁷³ HC Deb 27 January 2007 c1817

⁷⁴ "Minister forces skills council to cull boardroom chatter" *The Times Educational Supplement* 24 November 2006

teams will be retained. Information on the management structure of the 'new' LSC was given in a LSC news update in March 2006⁷⁵.

Clause 2 gives the Secretary of State power to make provision about regional councils in regulations. These may cover the membership of regional councils, the appointment of members and staff, the delegation of functions by regional councils and the payment of salaries and allowances to members. A draft statutory instrument, *The Learning and Skills Council for England (Regional Learning and Skills Councils) Regulations 2007* which would establish regional councils under clause 2 of the Bill and *Draft guidance to regional councils on objectives and budgets made under clause 2* are available on the Further Education and Training Bill 2006 website in the 'Illustrative documents' section⁷⁶.

Paragraph 14 of Schedule 1 of the Bill provides that the first set of regulations made under section 18A of the *Learning and Skills Act 2000* (to be inserted by clause 2) will be subject to the affirmative regulation procedure⁷⁷.

The removal of the local LSCs has generally been welcomed by commentators, such as a senior LSC figure:

I don't think anyone can put their hand on their heart and say: given where we are now we would have started with the 47 we've got⁷⁸.

A similar welcome was given to these provisions by Peers who spoke on the clause during the Second Reading debate in the House of Lords⁷⁹:

Baroness Sharp of Guilford: Let us look at the three most important parts of the Bill. The first is the reorganisation of the LSC, in Clauses 1 to 4, and the move to nine regional bodies instead of 47 local Learning and Skills Councils. This Bench welcomed such a change back in 2000. We argued very strongly that we did not need 47 local Learning and Skills Councils and that they ought to be aligned with the new regional bodies, the RDAs, which were being created⁸⁰.

However, John Hayes the Conservative shadow minister for FE has questioned the idea of a regional structure for the LSC:

The businesses I talk to tell me that the regional structure of the Learning and Skills Council is not always helpful. Some employers are based on locality; big firms span the nation. The current structure does not reflect this reality⁸¹.

⁷⁵ LSC News Updates *Top 100 chosen to lead 'new' LSC* 30 March 2006 at <http://www.lsc.gov.uk/news/latestnews/Top+100+chosen+to+lead+new+LSC+30.03.06.htm>.

⁷⁶ *Further Education and Training Bill [HL] Documents published by the Department for Education and Skills to assist in Parliament's consideration of the Bill at* <http://www.dfes.gov.uk/publications/furthereducationandtrainingbill/docs/illdocs.pdf>.

⁷⁷ *Further Education and Training Bill [HL] Explanatory Notes* Bill 75-EN paragraph 33

⁷⁸ "We all know what restructuring means" *The Guardian* 7 November 2006 at <http://education.guardian.co.uk/further/story/0,,1940871,00.html>.

⁷⁹ HL Deb 13 December 2006 Baroness Hamwee c1559, Baroness Valentine c1590, Baroness Lockwood c1573

⁸⁰ HL Deb 13 December 2006 c1548

⁸¹ "Conservatives would overhaul the LSC, pledges shadow education minister" *Fe now* Winter 2006

2. Strategy – making bodies

Clause 4 of the Bill inserts Sections 24A, B and C into the *Learning and Skills Act 2000*. This clause allows the Secretary of State by order to specify a body to formulate a strategy in relation to specified functions of the LSC for either the whole of England or a part of it (but not exclusively for either Greater London or a part of Greater London). This will enable strategies to be set either for a specified area in England in relation to specified functions of the Council, or in relation to a particular education and training theme for the whole of England. The LSC will be under a statutory duty to carry out any function specified in accordance with the strategy.

3. LSC for London

Clause 4 also provides that the Secretary of State may, by regulations, set up a body to formulate strategy and carry out the LSC's functions in Greater London. The regulations must provide for the body to consist of the Mayor of London as chair and other members appointed by the Mayor.

This clause puts the London Skills and Employment Board (LSEB) on a statutory footing and enables the Mayor of London, as chair of the LSEB, to develop a regional adult skills strategy for London.

This provision is the culmination of a longstanding debate on skills in London. In November 2005 the Government launched a consultation on additional powers for the Greater London Authority as part of its policy to devolve more powers to regional and local government⁸². Following the consultation on 13 July 2006 the Secretary of State for Education and Skills, Alan Johnson, announced that the Mayor of London would lead a new Skills and Employment Board and would be given a statutory duty to promote adult skills in London⁸³.

Ken Livingstone, Mayor of London, giving evidence to the Education and Skills Committee on 23 October 2006, explained the reason for the changes:

When the Prime Minister talked about a new package of powers for the office of Mayor, I came up with things which I thought were not working terribly well in London, and over the years I had picked up a lot of complaints from the business community about the Learning and Skills Councils

There are real improvements, but that does not do away with the need for a specific London dimension because the nature of the London economy is just completely out of all proportion to anything else in the UK.

⁸² Office of the Deputy Prime Minister *The Greater London Authority: The Government's proposals for additional powers and responsibilities for the Mayor and Assembly. A consultation paper November 2005*.

http://www.communities.gov.uk/pub/904/TheGreaterLondonAuthorityconsultationpaper_id1161904.pdf.

⁸³ DfES Press Notice 2006/0104 "Johnson announces Mayor will lead skills strategy for London" 13 July 2006 at http://www.dfes.gov.uk/pns/DisplayPN.cgi?pn_id=2006_0104.

We have gone from a finance and business services sector of about 18 per cent of employment to 38 per cent; we are most probably on our way to well into the forties. If we look at the growth of jobs in London, we anticipate over 600,000 new jobs in London in the next decade; 80 per cent will be in finance and business services. This has huge implications for London because already we have a middle range of jobs which has been squeezed out, and you have a large number of poorly-paid, low-skilled workers at the bottom and then this massively-growing business services sector. When they also project forward population changes, already a third of Londoners were born abroad and this is a process that is going to continue to grow. We anticipate that 80 per cent of the people coming into the workforce in the next decade will be black or Asian. These are dimensions which bear really no relation to anything else, not just in Britain but anywhere in Europe, and therefore, clearly, the skills offer has got to have a specific dimension which targets this⁸⁴.

The 15 members of the LSEB were announced on 5 December 2006⁸⁵ and the Board had its first meeting on 6 December. The remit of the Board is given on the London Development Agency website:

The Board will work within the framework of the National Skills Strategy and targets and will be accountable to Alan Johnson, Secretary of State for Education and Skills in respect of its work.

The LSEB will have the power of direction over approximately £400m (pa) of the London Learning and Skills Councils adult skills budget. In addition, it will have the ability to influence and direct the spending and priorities of other key agencies such as Job Centre Plus and the London Development Agency, who will be contributing to the delivery of the Boards Annual Skills Plan⁸⁶.

This clause acknowledges and responds to the fact that London is a unique region in terms of skills and aims to allow London to create its own 'distinctive and tailored solutions'⁸⁷ to the challenges it faces.

Draft regulations relating to the strategy making body for London, draft orders specifying the functions of the LSC to which the London strategy will relate and draft directions and guidance to the London strategy making body are available on the Further Education and Training Bill 2006 website in the 'Illustrative documents' section⁸⁸.

a. Consideration of Clause 4 in the House of Lords

Peers in the House of Lords welcomed the creation of the LSEB. A speech by Baroness Turner during the Committee Stage of the Bill was typical of many:

⁸⁴ <http://pubs1.tso.parliament.uk/pa/cm200506/cmselect/cmmeduski/uc1667-i/uc166702.htm>.

⁸⁵ <http://www.lda.gov.uk/server/show/ConWebDoc.1717>.

⁸⁶ London Development Agency "London Skills and Employment Board" at <http://www.lda.gov.uk/server/show/ConWebDoc.1659>.

⁸⁷ HC Deb 16 January 2006 c 1010

⁸⁸ *Further Education and Training Bill [HL] Documents published by the Department for Education and Skills to assist in Parliament's consideration of the Bill* at <http://www.dfes.gov.uk/publications/furthereducationandtrainingbill/docs/illdocs.pdf>.

I think that everybody agrees that there is a need for change. Indeed, the Bill has been generally welcomed throughout London and by the Mayor himself. London faces significant and unique skills and employment challenges⁸⁹.

During the Report Stage Lord Adonis accepted an amendment⁹⁰ by Baroness Turner which would make the LSEB a permanent statutory body:

Lord Adonis: My Lords, I start with the London skills and employment board. In Grand Committee, I promised that if my noble friend Lady Turner wished to table her amendment to Clause 4 again on Report, we would give it very sympathetic consideration. She has done so and I can say that we are glad to accept it. We always intended to put the arrangements for the existing non-statutory London skills and employment board on a firm and permanent footing. The amendment gives us the opportunity to do so, which we are glad to embrace. We are also glad that it has such wide support across the House⁹¹.

4. Abolition of statutory committees

Clause 5 removes the requirement that the LSC must establish a committee for young people and another for adults. This provision aims to allow greater flexibility to establish other types of committees to serve both groups of learners⁹². The LSC will however retain general powers to establish such committees 'as it thinks fit' under paragraph 1(1)(b) of Schedule 3 of the *Learning and Skills Act 2000*. Little comment has been made about the removal of these committees, but concerns were expressed in the House of Lords about the effect that abolishing these committees might have on the provision of adult education⁹³. A similar point has been made by the National Institute for Adult Continuing Education who are concerned that 'adult education and training is losing much of its statutory underpinning'⁹⁴.

5. Functions of the LSC

a. Diversity and choice

Sections 2 and 3 of the *Learning and Skills Act 2000* imposes a duty on the LSC to secure the provision of facilities for education and training which are suitable to the requirements of 16 to 19 year olds and persons aged over 19. Clause 6 of the Bill imposes a duty on the LSC to ensure that these facilities provide diversity of choice and opportunity in learning.

Clause 6 prompted debate in the House of Lords about provisions for disabled learners and about the inclusion of a duty to provide spiritual and moral guidance for students in

⁸⁹ HL Deb 23 January 2007 GC350

⁹⁰ Amendment Number 11

⁹¹ HL Deb 27 January 2007 c1509

⁹² HL Deb 23 January 2007 c318

⁹³ HL Deb 23 January 2007 c319

⁹⁴ NIACE Policy Briefing *House of Lords Second Reading, 13 December 2006 Further Education and Training Bill 2006* at http://www.niace.org.uk/Organisation/advocacy/Policy_Briefings/FETBill-2ndReading.pdf.

FE colleges. Amendments moved in Grand Committee in the House of Lords aimed to clarify the terms ‘diversity and choice’⁹⁵ and to establish whether the LSC had a duty to ensure provision for disabled students. Peers were assured by Lord Adonis that the *Learning and Skills Act 2000* and the *Disability Discrimination Act 1995* contained sufficient provision to cover rights for disabled students in FE⁹⁶. A disability equality scheme was published by the DfES on 4 December 2006 and a disability equality impact assessment of the Bill will be published in 2007⁹⁷.

In response to debate on spiritual and moral guidance Lord Adonis pointed out that section 44 of the *Further and Higher Education Act 1992* already contained provision for a weekly act of worship in FE colleges in respect of 16 to 19 year olds⁹⁸. He also referred to pilot schemes which are being developed to test and evaluate different approaches to pastoral support. The results of these pilots will be incorporated into guidance to providers by April 2008⁹⁹. The Association of Colleges was against the inclusion of a duty to provide moral and spiritual guidance in the Bill; in a briefing paper for Peers they said in their view it was ‘unnecessary and possibly even harmful to the interests of young people’¹⁰⁰.

b. Consultation

Clause 7 inserts a new section in the *Learning and Skills Act 2000*. New section 14A requires the LSC to have regard to guidance from the Secretary of State about consulting with learners, potential learners, employers and other specified persons, on the funding and provision of learning. The new section does not define consultation or when this should occur; the details of this will be provided in guidance. The *Regulatory Impact Assessment* published by the DfES states that ‘on the basis of current projects, the cost to the Department of issuing guidance to the sector is estimated at around £80k’¹⁰¹.

This provision is included in the Bill to facilitate the development of a ‘demand-led’ system of FE provision, whereby funding follows the choices of learners and employers. It is hoped that this type of system will be more responsive and will improve the quality of provision.

Draft guidance to the LSC on consulting employers and learners under provisions in clause 6 is available on the DfES Further Education and Training Bill website¹⁰².

⁹⁵ Amendment No 29

⁹⁶ HL Deb 23 January 2007 c361

⁹⁷ HL Deb 13 December 2006 c1613

⁹⁸ HL Deb 27 February 2007 c1521

⁹⁹ *ibid.* c1524

¹⁰⁰ Association of Colleges *Briefing for Peers: Further Education and Training Bill Report stage – 27 February 2007, Proposed amendment from the Lord Bishop of Manchester* at <http://www.aoc.co.uk/Members/comms/parl/smcsamendmentreport.doc>.

¹⁰¹ *Regulatory Impact Assessment Further Education and Training Bill* page 13

¹⁰² at <http://www.dfes.gov.uk/publications/furthereducationandtrainingbill/docs/illdocs.pdf>.

c. Provison of services

Clause 11 extends the powers of the LSC to design, develop and operate support services for individual learners and for education institutions. The clause will allow the LSC to offer support services such as software management systems, human resources functions and finance services, to publicly funded education and training providers.

The *Regulatory Impact Assessment* states that adopting this type of shared approach to support services could reduce costs and improve quality, but the costs of the initial investment may be substantial¹⁰³.

d. Employment and Training

Clause 12 widens the powers of the LSC to allow it to take part in arrangements for assisting persons to train for employment under section 2 of the *Employment and Training Act 1973* (c. 50) (*arrangements for assisting persons to select, train for, obtain and retain employment*). While the majority of the Bill extends to England and Wales only, clause 12 is one of a number of clauses that also applies to Scotland. Therefore this clause will require legislative consent from the Scottish Parliament. Clause 13 sets out the same provision for Northern Ireland under section 1 of the *Employment and Training Act (Northern Ireland) 1950* (c.29 (N.I.)) (*arrangements for assisting persons to select, train for, obtain and retain employment*).

At second reading of the Bill in the House of Lords, the Minister Lord Adonis stated that these clauses will 'enable the LSC to offer Career Development Loans'¹⁰⁴. The Career Development Loans programme currently operates across England, Wales and Scotland and is a deferred repayment commercial bank loan designed to help fund up to two years of vocational education or learning plus (if relevant) up to one year's practical work experience where it forms part of the course. The loan can be used to cover up to 80% of course fees plus any related expenses. The Government provide an incentive to borrowers by paying the interest on the loan during the period of training and for up to three months afterwards and guarantee a proportion of the loans to make it easier for the banks to consider lending for vocational training.

IV Part 2: FE Institutions

A. Introduction

FE institutions became autonomous corporations under the *Further and Higher Education Act 1992* (FHEA 1992). This Act removed FE institutions from local authority control and made them directly funded by the Further Education and Funding Council (now the LSC).

¹⁰³ Regulatory Impact Assessment Further Education and Training Bill page 23

¹⁰⁴ HL Deb 13 December 2006 c1539

Under sections 20 to 22 of the FHEA 1992 each FE institution as a statutory corporation is required to have a constitution together with an instrument and articles of government which regulate the conduct of the college.

Section 16 of the FHEA 1992 enabled the Secretary of State to establish new FE corporations and section 27 enabled the Secretary of State to dissolve corporations and transfer their assets and liabilities. Since 1997 thirteen new FE institutions have been established (two of these were as the result of mergers)¹⁰⁵ and one FE institution has been dissolved. The other dissolutions in this period were the result of mergers between institutions. A table showing all the FE institution dissolutions since 1997 can be found in an answer to a Parliamentary Question by Boris Johnson MP on 24 January 2007¹⁰⁶.

All of the establishments and dissolutions since 1997 were based on proposals developed by the Further Education Funding Council and, subsequently, the LSC following consultation with the local community¹⁰⁷.

B. Details of the Bill: Clauses 14 to 16

Clauses 14 to 16 transfer the power to incorporate and dissolve FE corporations from the Secretary of State for Education to the LSC. This amends sections 16 and 27 of the *Further and Higher Education Act 1992*.

Bill Rammell the Minister of State for Lifelong Learning, Further and Higher Education gave the reasons for the changes in answer to a Parliamentary Question on 24 January 2007:

Mr. Boris Johnson: To ask the Secretary of State for Education and Skills for what reasons he plans to transfer decision-making authority on the (a) establishment and (b) closure of Further Education Colleges from his Department to the Learning and Skills Council; and if he will make a statement.

Bill Rammell: The White Paper Further Education, 'Raising Skills: Improving Life Chances' set out our plans for greater flexibility and simplification of the FE system. The Learning and Skills Council (LSC) is best placed to ensure that the most appropriate arrangements for the delivery of such provision are in place in each area. While the Secretary of State currently decides whether to incorporate and dissolve further education corporations, this decision is based on a proposal developed by the LSC following consultation with the local community. By transferring these powers to the LSC we expect the process of establishing or dissolving institutions to be simpler, quicker and less bureaucratic.

In future, the Secretary of State would intervene in these processes only where he considered the Council was acting unreasonably in relation to its statutory duties¹⁰⁸.

¹⁰⁵ HC Deb 24 January c1814

¹⁰⁶ HC Deb 24 January c1812

¹⁰⁷ *ibid.*

¹⁰⁸ *ibid.*

1. Incorporation and dissolution of FE institutions

The DfES have published *Documents published by the Department for Education and Skills in advance of Lords Report Stage to further inform Parliaments consideration of the Bill*¹⁰⁹. This document gives a summary of current arrangements for establishing or dissolving a college:

Existing Arrangements

2. Most colleges are established and dissolved as a result of college “mergers”: where one corporation is dissolved and subsumed by another corporation; or where two corporations are dissolved and a new corporation is formed.

3. Currently, whilst the Secretary of State formally decides whether to agree a merger proposal and so establish new/dissolve existing further education corporations, this decision is based on information and a recommendation provided by the LSC. In practice few proposals from the LSC have raised concerns and all college mergers have been brought into effect.

4. Proposals to establish and dissolve further education corporations follow a well established consultation process which is set out in regulations (Statutory Instrument 2001/782). The regulations set out both the type of information to be included in the proposal, the manner in which it must be published (e.g. in a local newspaper), and require the LSC to send proposals to certain named organisations including the local authority. Proposals must be published for a period of at least one calendar month. The Department requires that local MPs are included in this consultation process. The regulations require the LSC to “consider any representations about the proposal made to it” during the consultation period. The LSC then puts together a case, with a recommendation, seeking Ministerial agreement.

5. The reorganisation and merger of FE corporations is a regular part of the LSC’s planning role in support of its responsibility for ensuring that the right structures are in place locally. Since May 1997:

- 13 new further education (FE) corporations have been established. 11 of the 13 were set up as a result of merger proposals.
- 68 further education (FE) corporations have been closed. 67 of the 68 were closed as a result of merger proposals.

These clauses generated no substantial debate in the House of Lords and were agreed without amendment in Grand Committee¹¹⁰.

Information on appeals against closure was given in answer to a Parliamentary Question on 24 January 2007:

¹⁰⁹

<http://www.dfes.gov.uk/publications/furthereducationandtrainingbill/docs/DocumentsPublishedPriorToLordsReport.pdf>.

¹¹⁰ HL Deb 25 January 2006 c 426

Further Education Colleges

Mr. Boris Johnson: To ask the Secretary of State for Education and Skills what right he intends (a) parents, (b) parent associations and (c) staff to have to appeal to the Learning and Skills Council on the closing down of Further Education Colleges under Clause 14, Part 2 of the Further Education and Training Bill 2007.

Bill Rammell: There are well established procedures, set out in regulations (Statutory Instrument No: 2001/782), for the publication of proposals to dissolve a further education corporation. Where a proposal is published by the Learning and Skills Council (LSC), this includes a requirement to consult. The Further Education and Training Bill [HL] retains the requirement for regulations, which prescribe both the type of information to be included in the proposal and the manner in which it must be published. This ensures those who have an interest in the proposal are informed and have an opportunity to make representations.

Proposals must be published for a period of at least one calendar month. Parents, parent associations and staff may take part in the consultation process. Any representations received must be taken into account by the LSC before a decision is made to dissolve a further education corporation¹¹¹.

C. Details of the Bill: Clauses 17 and 18 - Foundation Degrees

Clause 17 of the Bill will give FE colleges foundation degree awarding powers; this clause has proved to be the most controversial provision in the Bill and was significantly amended during the passage of the Bill through the House of Lords.

Clause 18 which requires the Secretary of State to lay a report before Parliament about the effect of clause 17 within a period of four years was added as a new clause during the Report Stage of the Bill¹¹².

1. Background

Foundation degrees were launched in September 2001 as an employment-related, vocational higher education qualification. The foundation degree is a new type of degree; the full time course is studied over two years and can be used as a stand alone degree, or may be put towards a three year Bachelors degree. Students completing the course may use the letters 'FDA' (for arts based subjects) or 'FDS' (for science based subjects) after their names.

Foundation degrees are designed and delivered by universities and colleges in conjunction with employers and as such they tend to be more vocational in nature than conventional three year degrees. Examples of the type of employer involvement in courses, was given in the higher education White Paper *The Future of Higher Education*:

Major employers like KLM and Rover have developed foundation degrees designed to meet their needs, as they modernise their workforce. And in the

¹¹¹ HC Deb 24 January 2007 c1812

¹¹² HL Deb 27 February 2007 c1559 Amendment No 44

public sector, both the Ministry of Defence and Department of Health have found the work based approach of foundation degrees valuable. Recently, the Department of Health announced that any health service employee with 5 years service will be entitled to training and development leading to an appropriate foundation degree. For teachers, new foundation degrees are being developed as routes into some BEd courses, and dedicated foundation degrees will be part of the new standards and qualifications framework proposed for higher level teaching assistants. By providing an important route to further career development, foundation degrees have a key role to play in modernising both private and public sector workforces¹¹³.

Information on foundation degree courses can be found on the DfES website¹¹⁴ and on the University and Colleges Admission Service (UCAS) website¹¹⁵.

Students studying for foundation degrees receive the same financial help, in the form of grants and loans, as students studying for three year bachelors degrees.

2. Expansion of foundation degrees

The Higher Education White Paper *The Future of Higher Education* which was published in January 2003 set out the Government's plans for reform of the higher education system and stated that foundation degrees would become the major vehicle for expansion in higher education:

Our overriding priority is to ensure that as we expand higher education places, we ensure that the expansion is of an appropriate quality and type to meet the demands of employers and the needs of the economy and students. We believe that the economy needs more work-focused degrees – those, like our new foundation degrees, that offer specific, job-related skills.

We want to see expansion in two-year, work-focused foundation degrees; and in mature students in the workforce developing their skills. As we do this, we will maintain the quality standards required for access to university, both safeguarding the standards of traditional honours degrees and promoting a step-change in the quality and reputation of work-focused courses.

[...]

But in order to get over the barrier of unfamiliarity and suspicion with which new courses are often regarded, and catalyse a change in the pattern of provision in the sector, we also intend to incentivise both the supply of and the demand for foundation degrees¹¹⁶.

For institutions, we will offer additional funded places for foundation degrees from 2004, in preference to traditional honours degree courses; so that the numbers studying traditional three-year courses will remain steady, and growth will come

¹¹³ *The Future of Higher Education* January 2003 Cm 5737 page 43

¹¹⁴ at <http://www.foundationdegree.org.uk>

¹¹⁵ at <http://develop.ucas.com/FDCourseSearch/About.htm>

¹¹⁶ *ibid.* paragraph 5.16

predominantly through this important new route. We will also provide development funding for institutions and employers to work together in designing more new foundation degree courses,

For students, we will provide incentives for those doing foundation degrees, in the form of bursaries which might be used either for extra maintenance, or to offset the fee for the course. We will provide £10 million in 2004–05, rising to £20 million in 2005–06, for these incentives.

We believe that these stimuli are necessary to break the traditional pattern of demand. Focusing more on two-year courses will serve both our economy's needs, and our young people, better in the future¹¹⁷.

At the start of academic year 2006/07 there were provisionally 60,925 students on HEFCE-funded foundation degree courses. The number of entrants grew more than eight-fold between 2001/02 and 2006/07. Growth over the whole period was broadly equivalent in full-time and part-time courses. In 2005/06 foundation degree students made up around 4% of all undergraduates in England¹¹⁸. The table below shows the growth in new entrants to these courses since their introduction.

Entrants to foundation degree courses in England

	Full-time	Part-time	Total
2001/02	2,050	1,725	3,780
2002/03	4,835	4,275	9,115
2003/04	8,160	6,905	15,070
2004/05	12,890	9,220	22,110
2005/06	16,830	9,820	26,650
2006/07	18,925	13,860	32,785

Source: HEFCE

There has also been growth in the number of institutions offering foundation degrees. In 2004/05 88% of FE colleges¹¹⁹, 80% of post-1992 and 38% of pre-1992 higher education institutions had registered/taught foundation degree students¹²⁰. In 2005/06 21% of full-time equivalent students were taught at FE colleges¹²¹.

HEFCE has analysed entrants to foundation degrees courses and programmes in 2004/05 and found that:¹²²

- 57% of entrants were female.
- 64% were aged 21 or over.
- Full-time young foundation degree entrants were more likely to come from 'lower' socio-economic groups and from state schools/colleges than

¹¹⁷ *The Future of Higher Education* January 2003 Cm 5737 pages 60-62

¹¹⁸ *Public resources for teaching and student numbers in HEFCE-funded institutions: 2005-06*, HEFCE

¹¹⁹ Excludes sixth form colleges

¹²⁰ HEFCE

¹²¹ *Public resources for teaching and student numbers in HEFCE-funded institutions: 2005-06*, HEFCE

¹²² *Foundation degrees. Key statistics 2001-02 to 2006-07*, HEFCE

- undergraduate entrants generally (38% and 96% compared to 29% and 87% respectively).
- 18% of full-time and 11% of part-time entrants were from a minority ethnic group.
 - 46% were taught wholly or partly at higher education institutions and 54% wholly at FE colleges.
 - The most common subjects were education, business and administrative studies and creative arts and design. Together they accounted for almost half of all entrants.

There are currently 1,600 foundation degrees courses available in a wide range of subjects such as agriculture, engineering, business, performing arts and design; a further 800 are being planned¹²³.

3. Delivery of foundation degrees

Foundation degrees may be taught and assessed by FE colleges but they are validated and awarded by a university. *The Future of Higher Education* White Paper outlined proposals to increase the role of FE colleges in delivering HE qualifications and in particular foundation degrees:

Further education colleges already play an important role in delivering higher education – they currently deliver 11 per cent of higher education. The vast majority of this (around 90 per cent) comprises two year work-focused programmes, including new foundation degrees, which means that delivery through further education will be especially important as we reshape the pattern of expansion.

Further education has strengths in providing ladders of progression for students, particularly for those pursuing vocational routes, and serves the needs of part-time students and those who want to study locally. Further education colleges make an important contribution to meeting local and regional skills needs, including through the higher education they provide. We want this significant role to continue and to grow. However, it will be important that any expanded provision is of the high quality that we expect from higher education. We believe that structured partnerships between colleges and universities – franchise or consortium arrangements with colleges funded through partner HEIs – will be the primary vehicles to meet these aims and will deliver the best benefits for learners.

However, there will be some instances – such as where ‘niche’ provision is delivered or where there are no obvious higher education partners – where direct funding of higher education in further education colleges may be more appropriate. These will be considered on a case by case basis by HEFCE, against criteria which will include critical mass, track record on quality and standards, and nature of provision. HEFCE will issue new guidelines on the supply of places and funding of provision through colleges¹²⁴.

¹²³ A full list of foundation degrees can be found on Foundation Degree Forward at <http://www.fdf.ac.uk/courses/index.php>.

¹²⁴ *The Future of Higher Education* January 2003 Cm 5737 page 62 paragraphs 5.20 – 5.22

To facilitate the delivery of foundation degrees the White Paper announced the establishment of a network of universities – “Foundation Degree Forward” – to offer a dedicated validation service for foundation degrees:

National Body for Foundation Degrees

Many further education colleges are working effectively with partner universities which formally award the foundation degrees they offer. In the best partnerships, these universities actively support the programmes and offer a real guarantee of quality to the student. However, not all further education colleges have local universities in the position to develop degree programmes with them in such a close and supportive way. To address this and to widen the choice for further education colleges, and other colleges without degree-awarding powers, we will establish a new national network of universities – “Foundation Degree Forward” – to offer a dedicated validation service for foundation degrees. It will also act as a national centre for foundation degree expertise, liaising with sector skills councils and professional bodies to draw up frameworks for foundation degrees covering a wide range of skills needs¹²⁵.

4. Foundation degree awarding powers

Degree awarding powers are granted by the Privy Council under Section 76 of the *Further and Higher Education Act 1992*. The Privy Council has set out a list of requirements for institutions seeking the power to devise and bestow degrees. As a starting point applicants must satisfy the council that they are governed, managed and administered effectively before they begin the lengthy process of proving that they have the appropriate regulatory framework to grant degrees. This process can take up to three years. An article in *The Guardian*¹²⁶ has suggested that only a few colleges will be eligible to apply:

Indeed, as things stand, only a small fraction of the 300 or so general FE colleges are set up to seek Privy Council approval to award degrees. The number currently stands at the 18 original members of the so-called mixed economy group of colleges, ie those which have 500 or more full-time equivalent students pursuing higher education courses. The MEG colleges actually number 26. But only the founder 16 members are directly funded by the Higher Education Funding Council for their HE students. The funding to the other eight for their HE students comes indirectly via the universities that validate and award their degrees. These universities retain between 10% and 40% of the cash.

Information on the possible criteria for granting foundation degree awarding powers was given by Lord Adonis during the Report Stage of the Bill in the House of Lords:

In all our discussions, the needs of learners and quality control have been paramount. We must take every precaution to protect not only the proud reputation of the UK's higher education brand, but also the prestige of the foundation degree both at home and abroad. We have worked closely with the Quality Assurance Agency in drawing up a draft criteria document, which has

¹²⁵ *ibid.* page 63 paragraph 5.23

¹²⁶ “Not a revolution” *The Guardian* 28 November 2006 at <http://education.guardian.co.uk/egweekly/story/0,,1958080,00.html>.

been made available to your Lordships. The document is a cornerstone of our rigorous quality assurance mechanism and will form the basis of the QAA's assessment of any further education institution in England applying for foundation degree-awarding powers.

The criteria are rightly stringent. They are based extremely closely on the existing standards for institutions applying for award-making powers, supplemented by additional criteria that are tailored specifically to the foundation degree qualification. These additional criteria include the requirement for an applicant institution to have no fewer than four consecutive years' experience, immediately preceding the year of application, of delivering HE programmes at a level equivalent to the foundation degree¹²⁷.

Draft criteria for foundation degree awarding powers are available on the Further Education and Training Bill website¹²⁸.

Information on the cost of applying for foundation degree awarding powers can be found in the *Regulatory Impact Assessment* document which states that the Quality Assurance Agency charges £30,000 for considering applications for taught degree awarding powers¹²⁹.

5. Issues raised over extending degree awarding powers

a. *Criticism of lack of consultation on degree awarding proposals*

Criticism has been levelled at the lack of consultation about granting degree awarding powers to FE colleges¹³⁰. This point was raised several times during the *Further Education and Training Bill's* second reading debate in House of Lords:

Baroness Sharp of Guildford: Finally, there is this question of the sheer lack of consultation. The proposal was not in the White Paper or in Foster. It was put into the Bill at very short notice and no one was consulted. As I said, that is not the way to make legislation¹³¹.

Baroness Sharp raised the concern that without consultation there could be unintended consequences for colleges¹³². The issue of consultation was addressed in a Parliamentary Question on 19 December 2006:

Stephen Williams: To ask the Secretary of State for Education and Skills which organisations were consulted prior to the publication of the Further Education and Training Bill on the granting to further education institutions of the power to award foundation degrees.

¹²⁷ HL Deb 27 February 2007 c1540

¹²⁸

<http://www.dfes.gov.uk/publications/furthereducationandtrainingbill/docs/RevisedDraftCriteriaForFoundationDegreeAwardingPowers.pdf>

¹²⁹ *Regulatory Impact Assessment Further Education and Training Bill* page 34

¹³⁰ "All at sea" *The Guardian* 19 December 2006 at

¹³¹ HL Deb 13 December 2006 c1551

¹³² HL Deb 13 December 2006 c1550

Bill Rammell: The proposal in Clause 19 of the Further Education and Training Bill emerged after informal discussions with a number of interested parties in the further and higher education sectors, following a recommendation by Andrew Foster in his report that the issue of foundation degree awarding powers for some further education colleges should be looked at. The proposal has also taken into account the challenges set by Lord Leitch in his recent report about the need to expand our higher level skills base. Since the publication of the Bill, we have written to a wide range of stakeholders and interested bodies to seek their views. We have made clear our commitment to working with partners in both the further and higher education sectors to make the proposals function effectively. We have already had informal feedback welcoming the provision in the Bill¹³³.

On 18 December 2006 a Parliamentary Question was asked about the possible effect on universities of allowing FE colleges to award degrees:

Foundation Degrees

Dr. Iddon: To ask the Secretary of State for Education and Skills what assessment he has made of the likely effect of allowing further education colleges to offer foundation degree courses on universities that also offer such courses.

Bill Rammell: The number of Foundation Degree enrolments has risen in five years to almost 47,000, and our ambitions are for further significant increases to 100,000 by 2010. If we are to achieve these ambitions, we will need to see volume growth in programmes delivered in further education colleges and higher education institutions alike¹³⁴.

b. Devaluation of foundation degrees

Concern has been expressed that foundation degrees will become devalued if FE colleges award them and that demand for these courses will decline:

There is a danger that allowing colleges to award FDs will drive some universities that are currently involved in them to drop them. If this happens, FDs might become more solidly associated with further education colleges, and might - albeit unjustifiably - lose their academic kudos¹³⁵.

Drummond Bone the president of Universities UK (UUK) has said:

If the degrees lose their association with universities, demand from employers and students may be stifled not encouraged¹³⁶.

¹³³ HC Deb 19 December 2006 c1864

¹³⁴ HC Deb 18 December 2006 c1491

¹³⁵ "Not a revolution yet. Will degrees be devalued if colleges can award them?" *The Guardian* 28 November 2006 at <http://education.guardian.co.uk/further/opinion/story/0,,1958380,00.html>.

¹³⁶ "Don't downgrade solid foundations for success" *Times Higher Education Supplement (THES)* 8 December 2006

c. *Disruption of FE/HE partnerships*

It has been suggested that allowing FE colleges to award their own degrees could disrupt established partnerships between FE colleges and higher education institutions:

The most worrying aspect is that the clause threatens partnership arrangements between FE and HE. Many universities have spent a great deal of time and effort in developing collaborative relationships with colleges, including allocating to them their own HEFCE numbers for foundation degrees. What will happen next? Will universities have to compete rather than collaborate with their partner colleges, which are using the universities' HEFCE numbers; or will universities have to withdraw these allocations from the colleges and try to devise ways of teaching their own foundation degrees, or, failing that, leave the places unfilled? Surely the Government do not want that to happen. What will happen to the guaranteed progression to honours degrees that the present system offers? This proposal is immensely disruptive and provides no obvious advantage¹³⁷.

However, Peter Knight, the retired vice chancellor of the University of Central England, has suggested that this may not be a problem:

The vice-chancellors do have one legitimate objection to the proposal: it will disrupt existing partnerships between universities and FE colleges. Unfortunately, these can be rather unequal partnerships, as the college has little opportunity to do anything other than touch its forelock and comply with the requirements of the partner university. Failure to do so means it doesn't get its FD validated

It will introduce competition into this aspect of higher education. It will even up the balance of power between universities and their FE "partners". Best of all, it will provide the freedom for FE colleges to build on their links with employers to offer FDs as relevant qualifications¹³⁸.

One commentator, Ian Tunbridge, dean of the University of Plymouth, has said that well established collaborative arrangements would probably continue:

I do not think that there is likely to be any wholesale move away from well founded collaborative arrangements because of the level of support provide by universities to colleges¹³⁹.

d. *Creation of new universities/two tier system*

It has been suggested that allowing FE colleges to award foundation degrees could lead to the creation of a new batch of universities¹⁴⁰. Patricia Ambrose, chief executive of Guild HE which represents colleges of higher education, has predicted that the change could have far reaching consequences for the shape of UK higher education¹⁴¹.

¹³⁷ Baroness Blackstone HL Deb 13 December 2006 c1567

¹³⁸ "Shifting the power balance by degree" *The Guardian* 19 December 2006 at <http://education.guardian.co.uk/further/opinion/story/0,,1974666,00.html>.

¹³⁹ "College powers may spawn new universities" *THES* 24 November 2006

¹⁴⁰ *ibid.*

¹⁴¹ *ibid.*

Concerns about 'mission drift' in FE colleges were raised during the Second Reading debate on the Bill in the House of Lords:

does it not represent considerable "mission drift" for further education colleges, which were meant to be focused, as my noble friend Lord Baker said, on 14-to-19 level 2 or 3 provision, and adult level 3? Even foundation degrees, as I read and understand it, are level 4¹⁴².

The Coalition of Modern Universities has expressed concern that allowing some colleges to have foundation degree awarding powers will create a two tier college system:

Clause 19 will result in two different types of foundation degree certificates – one validated only by a college and others confirming that the degree has been validated by a university (acknowledging any study which has taken place at a College which is what happens at present). Will such a two-tier system really assist the recognition and development of foundation degrees which the Government values?¹⁴³

e. Compatibility with the Bologna Process

It has been argued that allowing FE colleges to award degrees could cause difficulties under the Bologna Process, which is a Europe wide initiative to harmonise education structures across Europe. This point was raised by Baroness Sharp¹⁴⁴ and Lord Plumb¹⁴⁵ in the Second Reading debate on the *Further Education and Training Bill*:

The UK has spent the best part of 10 years trying to persuade our European partners within the Bologna process that our three-year bachelor degrees are worthy degrees and can be regarded as such. The proposal seems to muddy the field yet once again and makes it difficult to make clear to our Bologna partners that we are not devaluing¹⁴⁶.

The Minister of State for Lifelong Learning, Further and Higher Education, Bill Rammell has responded to these concerns in an answer to a Parliamentary Question on 19 December 2006:

Mr. Boswell: To ask the Secretary of State for Education and Skills what assessment he has made of the compatibility of extension of taught foundation degree awarding powers to further education colleges with UK participation in the Bologna Process.

Bill Rammell: The Bergen Communiqué of 2005 accepted the principle of Foundation Degrees within national systems by adopting an overarching framework for qualifications in the European Higher Education Area comprising three cycles. This includes, within national contexts, the possibility of short-cycle or intermediate HE qualifications (such as the Foundation Degree).

¹⁴² Lord Plumb HL Deb 13 December 2006 c1568

¹⁴³ CMU Universities Briefing *House of Lords FE and Training Bill (27 February) Report Stage: Clause 19*

¹⁴⁴ HL Deb 13 December 2006 c1551

¹⁴⁵ HL Deb 13 December 2006 c1568

¹⁴⁶ Speech by Baroness Sharp HL Deb 13 December 2006 c1551

I should make it clear that allowing further education institutions to apply for the power to award Foundation Degrees will in no way alter or undermine the status of the Foundation Degree as a higher education qualification. Indeed, over three-quarters of all current Foundation Degree programmes are delivered through the FE sector. Any further education institution applying for the power to award Foundation Degrees will be subject to rigorous quality assurance assessments which will be of the same standard as those already in place for institutions seeking degree awarding powers. There is no question that the extension of Foundation Degree awarding powers to further education institutions will be allowed to have any negative impact on the status of that qualification, whether in the domestic or international context¹⁴⁷.

6. Debate on foundation degree awarding powers

Spokespersons from the FE sector have welcomed the announcement that colleges could be given foundation degree awarding powers.

Julian Gravett Director of Funding and Development at Association of Colleges said:

The bigger picture on foundation degrees is that the education system needs a better skilled population. This implies a significant expansion of part-time higher education for those in work. There are colleges with decades of experience in higher level work and with 50 foundation degrees in their portfolio. It is hardly a case of mission drift if these colleges want to do more, to do it better and to do it quicker. This is the reason why clause 19 of the Bill deserves support in Parliament and why students will benefit if the university sector looks to the future rather than spending time defending institutional privileges¹⁴⁸.

Alan Tuckett, the director of the National Institute of Adult Continuing Education said:

We think this is brilliant news on two counts. Firstly, because at a stroke it shows in a practical way the government does value colleges.

And secondly it's the first sensible, tangible step towards an articulated tertiary system of education for the UK which is exactly what adults need¹⁴⁹.

However spokespersons from the higher education sector are concerned about the ramifications of giving FE colleges degree awarding powers.

A briefing document published by the Coalition of Modern Universities (CMU) to assist with consideration of clause 19 during Report Stage in the House of Lords said:

Clause 19 continues to raise the prospect of collateral damage in its operation on the reputation of foundation degrees as a qualification and the collaboration between education providers which has assisted their development. Universities

¹⁴⁷ HC Deb 19 December 2006 c1864

¹⁴⁸ "Foundation degrees" *The Times Higher Educational Supplement* 8 December 2006

¹⁴⁹ NIACE Press Release, PR 59/06, *Degree awarding powers for colleges welcomed by NIACE*, 15 November 2006 at <http://www.niace.org.uk/news/PressReleases/PR59.06.pdf>.

do not want foundation degrees to be a political football. As things stand at Report Stage, there are no good reasons for Peers to support Clause 19¹⁵⁰.

Universities UK (UUK) have also expressed their concerns in detail on their website¹⁵¹:

The measures in the Further Education Bill would constitute a major change in degree awarding powers and status, and we are aware of a number of serious concerns about the proposals as they currently stand. Some of these concerns are outlined below:

- Progression to HE may be adversely affected, and HEIs will have less incentive to articulate Foundation Degrees with Honours programmes - the move risks undermining excellent progress that has been made towards building ladders of progression, for example through Lifelong Learning Networks;
- It risks undermining the status of Foundation Degrees, emphasising that they are sub degree programmes only, and may lead to a decline in demand both from students and employers, and a reluctance on the part of HEIs to offer them;
- The UK HE 'brand' could be damaged by breaking the link between degrees and HE, and it could compromise our position within the Bologna negotiations;
- Many HEIs have invested heavily in building collaborative relationships with FE colleges and these may be put at risk if HEIs and FE colleges are in competition with each other;
- These are still new qualifications with a fragile reputation - this move risks destabilising progress towards embedding the qualification with potential students and employers just when good progress is being made;
- FE colleges do not currently have the power to award any other nationally recognised qualifications in their own right, but only through QCA recognised awarding bodies such as City and Guilds and BTEC. This move therefore creates an anomaly whereby FE colleges will be able to award HE level qualifications, but not those at FE level.
- The QAA quality assurance framework must apply including the academic infrastructure (including subject benchmarks, programme specifications and the code of practice) and given the limited scale of some of the provision this could be a disincentive to awarding Foundation Degrees.

¹⁵⁰ CMU Universities Briefing *House of Lords FE and Training Bill (27 February) Report Stage: Clause 19*

¹⁵¹ Universities UK "Further Education and Training Bill: Foundation degree awarding powers" 27 January 2007 at <http://www.universitiesuk.ac.uk/parliament/showBriefing.asp?id=51>.

7. Consideration of Clause 19 in the House of Lords

The provisions on foundation degree awarding powers were contained in Clause 19 in the Bill as presented to the House of Lords; this clause was the most contentious provision in the Bill and was debated at length during the passage of the Bill. Baroness Maddock speaking during the Second Reading debate commented that Clause 19 has 'been mentioned by almost every speaker'¹⁵².

The concerns of the Peers focused around three main issues; the effect on progression from foundation degrees to higher degrees if FE colleges were allowed to award their own degrees, the effect on quality if colleges were permitted to franchise degree awarding powers to other institutions (which is possible for other degree awarding powers) and whether foundation degree awarding powers should be granted initially on a temporary basis. Overall Peers were concerned that changes to the current arrangements could lead to quality control issues and damage the 'UK brand'.

The Government listened to the arguments sympathetically:

...there have been many hours—indeed, days—of discussion in and outside the House on Clause 19. These government amendments reflect those long discussions. I hope that they will enable us to establish a consensus across the House and I thank all noble Lords who have helped us to find a good way forward, including both opposition Front Benches. Perhaps I may mention also John Hayes, from the opposition Front Bench in another place, my noble friend Lady Warwick and her colleagues in higher education, including many Members of this House, and the noble Lord, Lord Dearing, who I know will speak after me to Amendment No. 43.

In our discussions, my honourable friend the Minister for Lifelong Learning, Further and Higher Education and I have reflected on three issues in particular, in relation to which we are now proposing amendments to Clause 19. The first issue is whether further education institutions should be allowed to authorise other institutions to award foundation degrees on their behalf. The second issue is whether the use of the new foundation degree-awarding powers should be subject to scrutiny after a fixed period. The third is whether there should be a formal review of the effects of FE colleges awarding their own foundation degrees.

In all our discussions, the needs of learners and quality control have been paramount. We must take every precaution to protect not only the proud reputation of the UK's higher education brand, but also the prestige of the foundation degree both at home and abroad. We have worked closely with the Quality Assurance Agency in drawing up a draft criteria document, which has been made available to your Lordships. The document is a cornerstone of our rigorous quality assurance mechanism and will form the basis of the QAA's assessment of any further education institution in England applying for foundation degree-awarding powers. The criteria are rightly stringent. They are based

¹⁵² HL Deb 13 December 2006 c1569

extremely closely on the existing standards for institutions applying for award-making powers, supplemented by additional criteria that are tailored¹⁵³.

To allay concerns Lord Adonis tabled amendments No 41, 42 and 44 during the Report Stage of the Bill. Amendments number 41 and 42 addressed the issue of whether FE colleges should be allowed to franchise degrees:

Amendments Nos. 41 and 42 reflect the helpful advice that we have received from the QAA on this matter. Amendment No. 41 proposes to amend Section 76 of the Further and Higher Education Act 1992 so that the Privy Council has the power to specify, in an order granting a further education institution foundation degree-awarding powers, that the institution's power to grant foundation degrees does not include the power to authorise other institutions to do so on its behalf. We are seeking to place controls on FE institutions applying for foundation degree-awarding powers where their students undertake a significant proportion of their foundation degree provision at another FE institution that does not have those powers.

[...]

We have therefore settled on Amendment No. 42, which amends Section 76 of the 1992 Act so that the Privy Council also has the power to specify in an order that the institution cannot grant a foundation degree to a person who was not enrolled at the institution at the time he completed the course of study for which the foundation degree is granted. This amendment should be considered in conjunction with further changes that we now propose to the criteria against which an applicant institution will be assessed. The QAA will not recommend an FE institution for foundation degree-awarding powers if that institution's foundation degrees are being taught largely by another FE institution that does not itself have those powers. This will be spelt out in the criteria that the QAA will use. I recognise that the draft criteria document that we published on 14 February does not fully reflect this point, and I undertake that the next version, which we intend to publish very shortly, will do so. I should add that in all this we are working closely with our advisers on quality in the QAA¹⁵⁴.

Amendment 44 inserted new clause 18 into the Bill:

Amendment No. 44 addresses whether the use of the new foundation degree-awarding powers should be subject to scrutiny after a fixed period of time; that was another issue raised in our deliberations in Grand Committee. My honourable friend the Minister for Lifelong Learning, Further and Higher Education and I have given careful consideration to the points made about this issue. We recognise that Parliament and the public have a strong interest in understanding the practical effects of the use of these powers. We all share a common interest in ensuring continuing confidence in the quality standards of foundation degrees, wherever they are awarded.

We propose, therefore, that the Secretary of State should be placed under a duty to lay a report before Parliament on the effects of Clause 19, which gives the

¹⁵³ HL Deb 27 February 2007 c1540

¹⁵⁴ HL Deb 27 February 2007 cc1544-45

Privy Council the power to grant FE institutions in England the power to award foundation degrees. This report, which is encompassed by Amendment No. 44, is to be laid within four years of Clause 19 coming into force. We believe that that is a further significant step towards meeting concerns raised in Grand Committee¹⁵⁵.

Lord Adonis further reassured Peers that progression routes would be available to all learners on foundation degree courses:

We fully agree with the noble Lord's wish to ensure that transparent and articulated progression routes are available to all learners. This issue, too, is dealt with comprehensively by the draft criteria for foundation degree-awarding powers. Paragraphs 28 to 34 of Section 3 of that document set out the requirement for articulation agreements to be a core feature of all foundation degree programmes. Articulation agreements are the means by which students studying for a foundation degree can identify routes for progressing to further higher-level study, typically the completion of an honours degree, either at the institution awarding the foundation degree or elsewhere¹⁵⁶.

D. Details of the Bill: Clauses 19 to 21

Clause 19 in the Bill before the Commons, clarifies the power of FE corporations to form or invest in companies and enables them to form or become members of charitable incorporated organisations. Clause 20 places a duty on FE institutions to have regard to guidance about consulting employers and learners.

1. Qualifications of Principals

Clause 21 enables the Secretary of State to make regulations requiring all college principals to achieve a stipulated leadership qualification before taking up a new post. This provision repeals section 137(3) of the *Education Act 2002*. *The Regulatory Impact Assessment* explains the working of this clause:

The repeal of section 137(3) Education Act 2002 would allow the Department to regulate for serving principals to obtain a specified qualification within 3 years of appointment. However, the Department intends initially only to regulate for those principals moving to a new post. It does not intend to make this leadership qualification mandatory for serving principals who remain in post at this stage. However, if there is insufficient voluntary participation in the qualifying programme by September 2009, the Secretary of State may amend the regulations to include this group. The new provisions in the Bill will allow the Secretary of State to amend the regulations to cover serving principals should this prove necessary¹⁵⁷.

Information on the cost of this provision is given in the *Regulatory Impact Assessment* on pages 30 and 31.

¹⁵⁵ *ibid.* c1546

¹⁵⁶ *ibid.* c1541

¹⁵⁷ *Regulatory Impact Assessment Further Education and Training Bill* page 30

a. Leadership/Management

The Government is committed to professionalising the FE workforce. Sir Andrew Foster's report *Realising the Potential*, highlighted the vital role of the FE college leader in creating a focused mission and purpose for the sector. The report recommended:

- The Government introduces clearer 'standards' and 'measures' for effective leadership that incentivise and reward outstanding work.
- The Government introduces new, radical approaches to bring in effective leaders from outside and ensure their success and impact. In the first instance it would be prudent to devise a programme to recruit and train 50 new senior middle managers a year from other sectors.
- The Government should consider how the synergies between National College for School Leadership, HE Leadership Foundation and CEL could be developed to simplify the leadership landscape, make best use of resources. And the Government should consider whether amalgamation is the best way of doing this.
- Government and colleges find a solution to make leadership development more affordable so more colleges engage¹⁵⁸.

The FE White Paper also emphasised the importance of good leadership in improving standards:

Strong management and leadership are crucial in all providers' drive to improve quality. We will introduce a qualification which all newly appointed college principals will be expected to achieve within a three year period. This will be developed in association with the CEL, and will recognize leadership expertise of those from other public sector or business backgrounds. The qualification will provide a nationally recognised standard against which governing bodies can assess potential candidates for positions as college principals. It will enhance the career development and job prospects of individuals. We will shortly consult on the arrangements for introducing this qualification¹⁵⁹.

In September 2006 the DfES announced a new qualification for FE principals which will be available from September 2007¹⁶⁰. The Minister of State for Lifelong Learning, Further and Higher Education, Bill Rammell discussed the qualification at a conference in London:

Bill Rammell said: "It will be personalised to the individual's needs, following a robust assessment with accreditation of prior experience and learning. This will support the professionalisation of the FE workforce."

Established principals will be encouraged to undertake the qualification on a voluntary basis, but it is the Government's intention that all principals should be

¹⁵⁸ Sir Andrew Foster *Realising the Potential A review of the future role of further education colleges* November 2005 page 65

¹⁵⁹ *Further Education: Raising Skills, Improving Life Chances* page 52

¹⁶⁰ New qualification announced for serving college principals at <http://ferl.becta.org.uk/display.cfm?resID=20350&page=633&catID=655>

qualified, or enrolled on the qualifying programme, by 2012. The Centre for Excellence in Leadership will be piloting the programme from January 2007.

Furthermore, in November 2006 Lifelong Learning UK, the sector skills council for post compulsory education and training published the first statement of roles, responsibilities and accountabilities of college principals in the *Benchmark Role Specifications for Principals*:

Good leadership is vital in taking forward improvements and preparing the next generation of principals. A major theme of our further education reforms is the recognition that the sector must continue to improve if we are going to achieve the economic and social rewards people deserve. We need skilled professionals to help every learner realise their potential, and to achieve our ambitious targets for excellent quality provision and success for all learners, wherever and whenever they access learning.

This is the first time that the roles, responsibilities and accountabilities of FE college principals have been clearly set out. These role specifications were developed in collaboration with the sector, as part of the overall work being undertaken by LLUK, and will help to support our agenda to professionalise the workforce¹⁶¹.

V Part 3: Industrial Training Levies

A. Introduction

The Construction Industry Training Board (CITB)¹⁶² and the Engineering Construction Industry Training Board (ECITB)¹⁶³ are the two remaining Industrial Training Boards (ITBs). ITBs were established under the *Industrial Training Act 1964* which gave the Secretary of State the power to establish Training Boards in any industry with the function of improving training facilities for people over school leaving age. By the end of 1969, 28 ITBs had been established by Statutory Instrument covering sectors as diverse as engineering and carpets, civil air transport and hairdressing¹⁶⁴. It is from these bodies that the voluntary system of Industry Training Organisations (ITOs) developed;¹⁶⁵ these in turn evolved into National Training Organisations and subsequently the 25 Sector Skills Councils (SSCs) which exist today¹⁶⁶. Legislation for the two remaining ITBs is now consolidated in the *Industrial Training Act 1982*.

¹⁶¹ http://www.lluk.org.uk/documents/docs/benchmark_role_specs.pdf.

¹⁶² See: <http://www.citb-constructionskills.co.uk/index.asp>

¹⁶³ See: <http://www.ecitb.org.uk>

¹⁶⁴ B. O. Pettman, *The Industrial Training Act and the Industrial Training Boards: History, Machinery, Progress and Criticisms*, Institute of Scientific Business Ltd, 1971

¹⁶⁵ A review in 1981 by the then Conservative government concluded that satisfactory training arrangements in many sectors could be better developed without the bureaucracy and compulsion which characterised the statutory scheme. Subsequently, the *Employment and Training Act 1981* gave the Secretary of State power to abolish ITBs and as a result the number of ITBs was initially reduced from 23 to 7. The industries which lost statutory training boards were expected to establish their own Non-Statutory Training Organisations. About 90 new voluntary bodies and 12 existing voluntary bodies replaced the 16 statutory ITBs.

¹⁶⁶ For more information on SSCs and the two remaining ITBs see Library Standard Note [SN/EP/3164](#).

The CITB and ECITB are tasked with the role of ensuring that the quantity and quality of training are adequate to meet the needs of the industries for which they are established. Both the CITB and the ECITB provide a wide range of services and training initiatives, including setting occupational standards and developing vocational qualifications, delivering Apprenticeships and paying direct grants to employers who carry out training to approved standards.

To enable the CITB and the ECITB to operate and provide for the training needs of their respective industries (and to share the cost of training more evenly between companies in the industry), employers in each industry are required to pay an annual training levy¹⁶⁷. CITB/ECITB grants are then given to registered employers who train their employees. Levies for each training board were established under the *Industrial Training Act 1982*, and are updated through annual Statutory Instruments (SIs). These draft SIs come under the aegis of the DfES.

Employers are required by law to complete the Statutory Manpower and Payroll Return forms sent out annually in April. The information requested on the form is necessary to assess the amount of training levies payable (if any) by individual companies based on the size of their wage bill (including payments to labour-only subcontractors), and to establish eligibility to receive training grants. The skill breakdown information declared on the form also provides analysis of employment needs and trends in the respective industries. After consultation with employers, the CITB and the ECITB submit recommended levy rates and threshold to Parliament for formal approval each financial year in the form of draft SIs. Once levy orders have been passed, each employer will receive a CITB or ECITB Levy assessment detailing any levy payable and eligibility for grants¹⁶⁸.

The 2007 orders were debated in committee in February and approved by Parliament on 7 March 2007; they give effect to proposals submitted by the CITB/ECITB for levies to be collected in 2008¹⁶⁹.

B. Details of the Bill: Clauses 22 to 23

Clauses 22 to 23 in Part 3 of the Bill amend sections 11 and 12 of the *Industrial Training Act 1982*.

Clause 22 will enable ITBs to consult with a wider base of employers than legislation currently allows when formulating a levy proposal. The *Industrial Training Act 1982* currently requires the ITBs to demonstrate to the Secretary of State that they have the

¹⁶⁷ Unless they are excluded from paying the levy because their wages and labour-only payments fall below the levy exclusion levels, as detailed in the SI.

¹⁶⁸ More information on the CITB levy can be found at: <http://www.citb.co.uk/citblevy/whatisthelevy/>. More information on the ECITB levy can be found at: http://www.ecitb.org.uk/UserFiles/File/RegisteredCompanies/GrantLevyGuide/levy_guide_updated1.pdf.

¹⁶⁹ The *Industrial Training Levy (Construction Industry Training Board) Order 2007* is available at: <http://www.opsi.gov.uk/si/si2007/20070607.htm>. The *Industrial Training Levy (Engineering Construction Industry Training Board) Order 2007* is available at: <http://www.opsi.gov.uk/si/si2007/20070609.htm>.

support of more than 50% of employers in their industry and that these employers will collectively pay more than 50% of the levy. However, evidence suggests that ITB's ability to demonstrate support has been falling for a number of years to only just above the 50% threshold (primarily because the number of employers choosing not to join designated federations has risen at a greater rate than those joining these federations)¹⁷⁰. Therefore, the Bill will allow the ITBs to seek the views of employers who are not members of employer federations or trade associations.

During debate in Grand Committee in the House of Lords, the Conservative peer Baroness Morris of Bolton commented:

Can the Minister explain why this adjustment has become necessary now, or, if it has always been apparent, why it has taken 13 years for it to be put right?

An illogical and inefficient requirement may seem in isolation no more than a minor irritation, but it is the cumulative effect that imposes such a debilitating drag on our productivity and effectiveness. I hope that this clause will indeed streamline procedures to the benefit of everyone involved. I am glad to see that Clause 24 is also designed to reduce bureaucracy; the length of the levy durations going from one to three years is a sensible step.

Perhaps I may take this opportunity to ask the Minister to confirm that these clauses are not indicative of any government intention to impose another compulsory levy order on business.

We on these Benches do not believe that an increase in compulsory levies is the way forward—certainly not when questions remain about how much constructive business involvement there is in the courses that would have to be funded. Instead, I hope that the Government will look at ways to encourage voluntary levies. The UK film industry's voluntary decision in August last year to confirm a levy on its membership shows what the possibilities are when an industry is properly involved in the training of its future employees¹⁷¹.

In response the Minister, Lord Adonis, stated:

Let me first confirm to the noble Baroness that this clause does not enable the imposition of levies in addition to those that can already be imposed under the Industrial Training Act 1982.

[...]

[Clause 22] broadens the means by which an ITB can demonstrate that it has such a consensus. It will also enable the Secretary of State to make provision in regulations setting out reasonable steps that an ITB may take for this purpose. The Government have made available a draft set of indicative regulations which illustrate the likely types of such steps.

¹⁷⁰ Regulatory Impact Assessment, Further Education and Training Bill [HL] (updated for introduction in the House of Commons), page 35

http://www.dfes.gov.uk/publications/furthereducationandtrainingbill/docs/FEBillRIA-Commons_revised.PDF

¹⁷¹ HL Deb 25 January 2007 cc468-69GC

The changes will not prevent an industrial training board consulting any organisation such as a trade federation which is authorised to speak on behalf of its members who are likely to pay the levy. Rather, they will enable it to seek the views of employers by other means including, for example, the use of sampling or approaching employers directly. It will be for the industrial training boards to choose the consultation process that best suits the needs of its industry, and in all cases the Secretary of State will need to be satisfied that the process followed by the board is reasonable¹⁷².

Clause 23 requires that proposals for levy orders cover a three-year period rather than the annual orders which are currently in place. Regarding the rationale for this, the Bill's *Regulatory Impact Assessment* states that:

Taking levy proposals to Parliament annually is very bureaucratic and time consuming especially as the levy rates have remained unchanged for a number of years. The legislative change will reduce the amount of Parliamentary time taken processing annual orders and reflects a more strategic approach to the levy process¹⁷³.

This measure was welcomed in the House of Lords, with Baroness Morris of Bolton stating:

The move from one to three years will be most welcome, not least by those of us who meet in this Room every year to discuss the levies. For that, I am most grateful¹⁷⁴.

VI Part 4: Miscellaneous and General

A. Powers given to the National Assembly for Wales

Clause 25 of the Bill confers legislative competence on the National Assembly for Wales in respect of the core objectives of the Bill. The mechanics of this clause were explained by the Minister for Education, Lifelong Learning and Skills, Jane Davidson, in a debate on the Bill in the National Assembly for Wales on 1 February 2007¹⁷⁵ (the debate discussed the clause as number 26 – the clause as presented in the Bill before the House of Lords):

Jane Davidson: This is a very exciting day for us, with regard to debating the powers that are coming to the Assembly under this Bill, because it contains a huge number of freedoms—provided that clause 26 remains in the Bill, but that does not seem to be in question in any way at the moment. Paragraph 12 of the report sets out the six matters listed in clause 26, and, as you will see, they are

¹⁷² HL Deb 25 January 2007 c469GC

¹⁷³ Regulatory Impact Assessment, *Op Cit.*, page 35

174 HL Deb 25 January 2007 c469GC

¹⁷⁵ NAW Deb 1 February 2007 [83] and [84] at

http://www.wales.gov.uk/cms/2/CommitteeMeeting/N000000000000000000000077/6cbdc3c4ebcc2001eb26d597d8575d53.htm#_Toc158442629

very wide indeed. For example, I am sure that people will want to talk about powers of intervention, and issues around governance cover the powers of intervention.

[84] I thought that it would be useful to explain to Members what will happen here when this Bill becomes an Act. Any proposals for Assembly Measures to be made using the powers set out in clause 26 will be required to follow Assembly Standing Orders. Under section 98 of the Government of Wales Act 2006, Standing Orders must first provide for a general debate on a proposed Assembly Measure with opportunities for Assembly Members to vote on its general principles; secondly, the consideration and opportunity for Assembly Members to vote on the details of the proposed Assembly Measure—so, in that way, it is not dissimilar to how we operate at the moment—and thirdly, a final stage at which a proposed Assembly Measure can be passed or rejected. In other words, there will be an opportunity for Assembly Members to scrutinise any proposal for an Assembly Measure under the powers set out in clause 26.

[85] So, although the primary law-making, as it were, is contained in the Further Education and Training Bill, the delivery and any regulations on how we deliver any law in Wales will be a matter for us, under clause 26. That is very closely linked to the review of the mission and purpose of further education, which we have just been discussing. By engaging stakeholders in this review, we can ensure that the Welsh Assembly Government and Assembly Members are fully informed of all the issues when proposing and considering future Assembly Measures. It gives us the chance, as Sir Adrian says, to achieve real coherence with regard to how we wish to take forward the education and training system in relation to issues in the FE sector.

The *Regulatory Impact Assessment* states that:

Assembly procedures will specify any requirements for Regulatory Impact Assessments in respect of draft Measures brought forward. Any impact appraisal of Assembly Measures will be for the Assembly themselves to carry out and publish. This is in line with other such provisions in recent Westminster Bills¹⁷⁶.

The power to establish and dissolve FE corporations under clauses 14 to 16, the functions under section 16 and 27 of the *Further and Higher Education Act 1992*, were transferred to the National Assembly for Wales in 1999 by SI 1999/672 in consequence of the *Government of Wales Act 1998* and will as from May of this year be exercisable by the Welsh Ministers¹⁷⁷.

¹⁷⁶ *Regulatory Impact Assessment Further Education and Training Bill* page 4

¹⁷⁷ *Select Committee on Delegated Powers and Regulatory Reform Session 2006-07 Fifth Report* Appendix 5 paragraph 7

VII Defeat of Clause 17 in the House of Lords

A. Intervention in FE institutions

1. Provisions in Clause 17

Clause 17 of the Bill as presented in the House of Lords transferred the Secretary of State's power of intervention (with some modifications) to the LSC. This would have given the LSC the statutory authority to intervene in certain prescribed circumstances, such as where a college was identified as underperforming or mismanaged. The LSC would have further been given a new power to enable it to direct a governing body to dismiss its principal or senior staff.

Information was given on the provision in answer to a Parliamentary Question on 29 January 2007:

Further Education Colleges

Mr. Boris Johnson: To ask the Secretary of State for Education and Skills what measures are planned to be used to assess the performance of further education colleges to determine the basis for intervention by the Learning and Skills Council under Clause 17, Part 2 of the Further Education and Training Bill 2007.

Bill Rammell: Further Education Colleges have the lead responsibility for assessing their own performance and identifying what needs to be done to secure continuous improvement.

Clause 17 through the new section 56B will place an obligation on the Learning and Skills Council (LSC) to develop and publish its policy with respect to the exercise of its powers under section 56A. This will include its policy on assessing the performance of colleges to determine any appropriate LSC intervention.

In the meantime, the guidance document "Identifying and Managing Underperformance" sets out an overview of the evidence base currently being used to determine whether LSC intervention is necessary. This guidance is available on the LSC website and a copy has been placed in the House Library¹⁷⁸.

The Association of Colleges provided a briefing for peers on the provision which outlined how they perceived the clause would work:

Clause 17 of the Further Education and Training Bill transfers powers to intervene in the work of an FE college, which currently lie with the Secretary of State, to the Learning and Skills Council (LSC).

Where the LSC has concerns about the way a college is being managed it can:

- remove all or any of the governing body and appoint new governors
- direct the governing body on how to exercise its duties

¹⁷⁸ HC Deb 27 January 2007 c72

- order the governing body to dismiss senior post-holders – including the Principal

The Secretary of State will also have a power to direct the LSC to take action as described above¹⁷⁹.

During the Report Stage of the Bill in the House of Lords amendment Number 34 to leave out Clause 17 was moved by Baroness Morris of Bolton and was agreed on a vote by 187 votes to 135¹⁸⁰.

Bill Rammell, the Minister of State for Lifelong Learning, Further and Higher Education has said that he will seek to reintroduce the measure when the Bill returns to the House of Commons:

It would have made it easier to address quickly and effectively those rare instances of unsatisfactory further education provision," he said. "The LSC is better placed to exercise these powers than the secretary of state because it has a good understanding of the local factors that may be behind any instances of underperformance¹⁸¹.

2. Background to the provision: Standards in FE colleges

The Learning and Skills Act 2000 required that the Secretary of State was informed about the following matters in FE colleges:

- the quality of education
- the standards achieved by those receiving that education and training
- whether financial resources made available to those providing that education and training are managed efficiently and used in a way which provides value for money

To comply with this requirement the Adult Learning Inspectorate¹⁸² (ALI) and the Office for Standards in Education¹⁸³ (OFSTED) conducted inspections of post 16 non-higher education and training using the common inspection framework developed for the sector.

Inspections of FE colleges began in September 2001 and it was intended that all colleges of FE and sixth form colleges would be inspected on a four year cycle. The first round of inspections was completed in 2004/05. Details of the findings of the inspections were published in *The Annual report of Her Majesty's Chief Inspector of Schools Report 2004/5*¹⁸⁴.

Provision in colleges was rated as satisfactory or unsatisfactory. The report was critical of provision in some areas of the sector:

¹⁷⁹ <http://www.aoc.co.uk/Members/comms/parl/second-reading-powertosackprincipals.doc>.

¹⁸⁰ HL Deb 27 February 2007 c1536

¹⁸¹ "Minister set to try again to give LSC sacking powers" *The Times Educational Supplement* 2 March 2007.

¹⁸² <http://www.ali.gov.uk/>.

¹⁸³ <http://www.ofsted.gov.uk/>.

Overall, the provision in most colleges is at least satisfactory. Inspection has identified colleges that have been particularly successful and best practice has been reported. But inspection has also identified unsatisfactory provision which, almost without exception, had not been recognised as such by the colleges themselves. Colleges are judged to be 'inadequate' where the education and training overall fail to meet the reasonable needs of those receiving them.

Over the cycle of inspections, unsatisfactory or poor provision has been improved considerably. In 2004/05, 120 curriculum or WBL areas were re-inspected in 54 colleges. More than nine out of 10 of these areas had improved to become satisfactory or better (see Table 3). All 10 colleges in which unsatisfactory leadership and management were re-inspected had at least satisfactory leadership and management on re-inspection. Over the four-year cycle, colleges have been able to remedy deficiencies identified by inspection once they have acknowledged them.

Over the inspection cycle, the provision in 41 colleges has been designated as inadequate overall. So far, 21 colleges have been fully re-inspected and all but one have improved sufficiently to be removed from the category. Eleven inadequate general further education (GFE) colleges were re-inspected in 2004/05 and all now make at least adequate provision for their students. Across the 11 colleges, 42 curriculum or WBL areas were unsatisfactory or worse when they were first inspected. In four colleges, one or more curriculum or WBL areas remained unsatisfactory when the colleges were re-inspected. Almost eight out of 10 curriculum areas had improved to become satisfactory or better (see Table 4). Less success was seen in WBL areas.

The lower proportion of curriculum and WBL areas that have improved to satisfactory or better in inadequate colleges compared with other colleges reflects the scale of problems in these colleges. However, some inadequate colleges have been particularly successful in turning round a substantial proportion of their unsatisfactory provision. Managers and teaching staff have generally responded well to monitoring visits and have worked to improve provision by the time of the next visit.

In 15 of the 20 previously inadequate colleges judged to be adequate at their second inspection, the improvements in the quality of provision had led to notable increases in overall qualification success rates. In the remainder, the improvements in the quality of provision and reshaping of the curriculum had not yet led to an overall improvement in success rates at the time of the second inspection.

One recurrent finding has been that those colleges where teachers, tutors and managers acknowledge the deficiencies uncovered during inspection, analyse inspectors' feedback carefully and set about devising appropriate remedial action as soon as possible make more progress than otherwise. While the inspection may identify weaknesses, the scale and sustainability of improvement lies in the hands of college staff.

¹⁸⁴ <http://live.ofsted.gov.uk/publications/annualreport0405/1.6.6.html>.

A briefing published by the Confederation of British Industry (CBI) in June 2006 called *Transforming further education*¹⁸⁵ was also critical of provision in some parts of the FE sector:

figures suggest the present system is letting down learners and their employers. Over two-thirds of employed 20-30 year-olds recently surveyed thought that their education could have done more to prepare them for working life, including stressing the importance of learning about teamworking and meeting deadlines. The CBI therefore supports government proposals to put workforce skills at the heart of funding for FE colleges.

The Association of Colleges responded to criticism in the CBI report in a press release, *CBI FE report – College quality highest ever*.

“Compare this report – poor judgement based on bad evidence – with the government’s own National Employer Skills Survey, which asked 27,000 employers what they thought. 95% of these employers were satisfied with college training.

“We do need to scotch once and for all the myth that college quality is anything but exemplary and that colleges do not successfully engage with employers.

“Just 2.9% of colleges are currently judged as inadequate by Ofsted – higher than schools and almost ten times better than work based learning providers. The real challenge is not so much improving what colleges do as helping them do more of it. This means expanding capacity and persuading government, more employers and more individuals to invest in their training and development¹⁸⁶.

The White Paper gave a commitment to eliminate inadequate and unsatisfactory provision across the FE sector by 2008 and to improve those organisations where provision was just satisfactory or not showing any improvement. The LSC intervention strategy is outlined in a document called *Identifying and Managing Underperformance*¹⁸⁷.

3. Current provisions on intervention

The Secretary of State has power to remove members of a FE institution’s governing body:

Further Education Colleges

Mr. Boris Johnson: To ask the Secretary of State for Education and Skills which members of the governing bodies of Further Education Colleges were removed from their posts by order of the Secretary of State in each year since 1997.

¹⁸⁵ CBI Brief June 2006 *Transforming further education*
[http://www.cbi.org.uk/ndbs/positiondoc.nsf/1f08ec61711f29768025672a0055f7a8/FE9F26A96C88EFFB8025719500360AB6/\\$file/furthered0606.pdf](http://www.cbi.org.uk/ndbs/positiondoc.nsf/1f08ec61711f29768025672a0055f7a8/FE9F26A96C88EFFB8025719500360AB6/$file/furthered0606.pdf).

¹⁸⁶ AOC Press Release, 19 June 2006 CBI FE report – College quality highest ever
<http://www.aoc.co.uk/aoc/Members/comms/pressreleases/CBI%20report%20release>.

¹⁸⁷ LSC *Identifying and Managing Underperformance* January 2007 at
http://readingroom.lsc.gov.uk/lsc/National/nat-identifyingmanagingunderperformance_pt1-jan07.pdf.

Bill Rammell: The Department's records indicate that the power, under Section 57 of the Further and Higher Education Act 1992, for the Secretary of State to remove members of a governing body of a further education corporation has not been exercised.

This is a reserve power to be used only in exceptional circumstances where all other options have failed. We believe that having the power available and the possibility of it being exercised has been the trigger, in some cases, for governing bodies to act themselves¹⁸⁸.

4. Comment on Clause 17

The Association of Colleges was highly critical of the provision and called it an 'unprecedented interference':

AoC and fforwm, our sister organisation in Wales, remain of the view that powers contained in Clauses 17 and 18 are not needed and would be an unprecedented interference in self-governing institutions.

The powers are more far-reaching than those covering schools, higher education colleges and universities and could compromise the private sector and charitable status of further education colleges. The power over employment will confuse the role of the Learning and Skills Council and Welsh Assembly Government (WAG) and make it more difficult for the Government to realise its ambition for a demand-led system. A regulator cannot fairly supervise a market if it can also dismiss the chief executive of some of the participants.

What is worse is the damaging impact that the powers could have on the engagement of 8,000 college governors, many of whom are drawn from business and the public services. Governing bodies will feel they should wait for the judgement of the LSC and could find themselves embroiled in unhelpful three-way negotiations. The only people to benefit will be employment lawyers¹⁸⁹.

The Association of Colleges arguments are given in more detail in a briefing document for Peers¹⁹⁰.

The National Institute of Adult Continuing Education has referred to these provisions as 'using a sledgehammer to crack a nut':

Although there have been occasional well-publicised college failures in the period since incorporation, it is not at all clear whether such statutory powers either necessary or appropriate.

¹⁸⁸ HC Deb 24 January 2007 c1812

¹⁸⁹ Association of Colleges *Briefing for Peers: Further Education and Training Bill Report stage – Tuesday 27 February 2007 Clauses 17 and 18* <http://www.aoc.co.uk/Members/comms/parl/clause17-18report.doc>.

¹⁹⁰ Association of Colleges *Briefing for Peers Further Education and Training Bill – Second Reading Wednesday 13 December Power to Sack College Principals* <http://www.aoc.co.uk/Members/comms/parl/second-reading-powertosackprincipals.doc>.

The overwhelming majority of colleges are not failing – indeed learners rate their services highly. In May 2005, the National Audit Office report *'Securing strategic leadership for the learning and skills sector in England'* noted that:

'The Department and the Learning and Skills Council should continue to look at options for eventual self-regulation of colleges in the longer term' (executive summary, point 9).

The government might be pressed about what concerns have emerged since that time that are so serious the proposed change is required. Neither schools, universities nor private training providers in receipt of public money face such intervention by a quango. The Secretary of State already has powers to intervene where necessary.

Giving the responsibility to intervene to a funding body suggests that such a power might be used more frequently – so Peers may wish to examine what technical competences the LSC has (or should have) to take such actions – particularly in respect of clause 17 (2) (d). If a change in the law is necessary, Parliament might expect to see a leading role written in for the Office for Standards in Education¹⁹¹.

The main argument against the provision put forward in the House of Lords on clause 17 was the lack of democratic accountability of the LSC:

Lord Bilston: The Secretary of State currently has the power to remove members of college governing bodies under the Further and Higher Education Act 1992. This Bill transfers these powers to the Learning and Skills Council but also adds to the powers by allowing the LSC to dismiss senior college postholders.

The Government seem to have an enthusiasm for transferring their responsibilities to quangos such as the Learning and Skills Council. I ask this more in sorrow than in anger but why, when we campaigned so hard for so many years to get back into government, are we handing over so many responsibilities and key decisions to people with no democratic accountability?¹⁹²

VIII Responses to the Bill

Association of Colleges (AoC), John Brennan, Chief Executive¹⁹³:

We believe the Bill reflects the Government's and our own aspiration to place Further Education at the very heart of this nation's economic and social future. The AOC therefore welcomes the Government's resolve to offer colleges new powers to create and validate Foundation Degrees and to free-up LSC structures and operations so that decision-making is closer to the front-line.

¹⁹¹ http://www.niace.org.uk/Organisation/advocacy/Policy_Briefings/FETBill-2ndReading.pdf.

¹⁹² HL Deb 6 March 2007 c142

¹⁹³ DfES Press Release 2006/0166, *Colleges and learning providers ready to face skills challenges ahead: Further Education and Training Bill published today*, 21 November 2006 at http://www.dfes.gov.uk/pns/DisplayPN.cgi?pn_id=2006_0166

National Institute for Adult Continuing Education (NIACE)¹⁹⁴:

NIACE has given a cautious welcome to the Further Education and Training Bill published on Tuesday 21 November, but regrets the missed opportunity to rebalance funding in the sector better to meet the needs of the country. NIACE welcomes, however, the provision in the Bill to strengthen the voice of learners in the governance of institutions in the sector. As part of this, NIACE is pleased with the requirement for the Learning and Skills Council (LSC) nationally to consult learners as well as employers on matters affecting them. NIACE trusts that such consultation will help to re-balance the advice available to government and the Learning and Skills Council, to ensure that adult learners' interests are better reflected in public policy.

Alan Tuckett, Director of NIACE, said: "The FE Bill published today brings important improvements for adult learning – particularly with the strengthening of learner voices in policy making. We were particularly pleased that Bill Rammell backed this element of the legislation with the launch of a national learners' panel."

"But overall the Bill is a missed opportunity to re-balance the law in the light of demographic change. Two in three of the jobs of the next 10 years must be filled by adults, since there are not enough young people to fill them. Yet the law is still overwhelmingly focused on the needs of 14 – 19 year-olds. The result of this is up to a million adults losing their places over just three years. NIACE believes we need a further education system where adults and young people alike can expect their learning needs to be met. Despite its positive measures, this Bill falls short of that."

Learning and Skills Council Chair, Chris Banks¹⁹⁵:

The LSC welcomes the new Bill which puts into effect the provisions of the White Paper, and reflects the rapidly changing world in which the LSC operates. There has been real progress in FE and this Bill demonstrates the Government's commitment to the sector by putting it firmly centre stage in building the skills of the nation. It will also enable the LSC to reinforce its role as a strategic partner and "market maker", recognising success while driving out poor quality, to the benefit of employers, individuals, communities and the economy.

Association of Learning Providers (ALP) Graham Hoyle, Chief Executive¹⁹⁶:

We are pleased to see the government's commitment to contestability reaffirmed and technical barriers tackled, to enable strong voluntary partnerships between different types of quality providers to be effectively developed.

¹⁹⁴ NIACE Policy Briefing *House of Lords Second Reading, 13 December 2006 Further Education and Training Bill 2006* at <http://www.niace.org.uk/news/Archives/Nov06.htm#fe>.

¹⁹⁵ DfES Press Release 2006/0166, *Colleges and learning providers ready to face skills challenges ahead: Further Education and Training Bill published today, 21 November 2006* at http://www.dfes.gov.uk/pns/DisplayPN.cgi?pn_id=2006_0166

¹⁹⁶ *ibid.*

157 Group, Ioan Morgan, Chair¹⁹⁷:

The 157 Group of colleges welcomes and supports the thrust of the FE Bill. Trusting able colleges to do more for themselves is pivotal to enable self regulating colleges to deliver on skills, community cohesion and economic development. In the spirit of the Foster report, the FE system is now further enabled to support business and industry and to allow individuals to progress from entry to degree level. The Bill also positions the FE system to respond effectively to the challenges of the forthcoming Leitch report.

¹⁹⁷ *ibid.*